

**EXHIBIT 6 to the Declaration Of Laura W. Sawyer In Support Of Debtors' Motion For
An Order Excluding The Testimony Of Daniel Curry And Jeffrey Hasterok**

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Chapter 11
CASE NO. 08-13555 (JMP)
Jointly Administered

IN RE: LEHMAN BROTHERS
HOLDINGS, INC. et al.

Debtors,

TRANSCRIPT OF
DEPOSITION OF PETER SHAPIRO

TRANSCRIPT of the stenographic
notes of the proceedings in the
above-entitled matter, as taken by and
before TAB PREWETT, a Registered
Professional Reporter, a Certified
Shorthand Reporter, a Certified LiveNote
Reporter, and Notary Public, held at the
Offices of JONES DAY, 222 East 41st Street,
New York, New York, on Wednesday, March 5,
2014, commencing at 10:15 a.m.

Page 2

1
2 A P P E A R A N C E S:
3
4
5 JONES DAY
6 BY: LAURI W. SAWYER, ESQ.
7 REBEKAH BINGER, ESQ.
8 222 East 41st Street
9 New York, New York 10017-6702
10 Attorneys for Lehman Brothers
11
12
13
14
15
16 PACIFICA LAW GROUP
17 BY: PAUL J. LAWRENCE, ESQ.
18 1191 2nd Avenue
19 Seattle, Washington 98101-2945
20 Attorneys for Washington TSA
21
22
23
24
25

Page 3

1 Peter Shapiro
2 P R O C E E D I N G S
3 P E T E R S H A P I R O,
4 having been sworn by the notary public to
5 testify to the truth, testified as follows:
6 DIRECT EXAMINATION
7 BY MS. SAWYER:
8 Q As you know, Mr. Shapiro, this
9 is a deposition, and I wanted to go over
10 some ground rules just to make sure that we
11 start off on a good note. So we want to
12 make sure that we both speak slowly so the
13 court reporter can take down what we are
14 saying.
15 We also want to try to wait
16 until I finish my questions before you give
17 answers; and, likewise, I will try to wait
18 until you finish your answers before I ask
19 the next question.
20 And if you don't understand a
21 question I ask, I really do want you to ask
22 me to rephrase it or let me know that you
23 don't understand the question. If you
24 answer a question I've asked, I am going to
25 assume that you knew what I meant.

Page 4

1 Peter Shapiro
2 And as you just mentioned, you
3 were deposed by my colleague Jay Tambe in
4 December in this case, correct?
5 A Correct.
6 Q And in that deposition you were
7 designated by Washington TSA to discuss
8 certain topics; is that correct?
9 A That's correct.
10 Q And you also testified as a
11 fact witness at that time, correct?
12 A Correct.
13 Q After that deposition, did you
14 discuss your deposition with anybody?
15 A I discussed it with counsel.
16 Q Okay. Anybody else?
17 A In the most general terms with
18 my wife and one of my colleagues at work.
19 Q And who did you discuss it with
20 at work?
21 A Nat Singer.
22 Q And what did you discuss with
23 Mr. Singer?
24 A I discussed just generally how
25 long it was, and how -- you know, how I

Page 5

1 Peter Shapiro
2 felt it went.
3 Q And how did you think it went?
4 A I thought it went well.
5 Q Did you discuss any of the
6 substance of the questions that you were
7 asked with Mr. Singer?
8 A No.
9 Q How long was the conversation
10 with Mr. Singer?
11 A It was in the context of a
12 conversation that would have covered many
13 other matters. You know, we talk multiple
14 times a day. I wouldn't have made a note
15 of how long it was.
16 Q Do you recall approximately how
17 long you discussed your deposition with
18 Mr. Singer?
19 A I would say it was less than
20 two minutes.
21 Q Other than Mr. Singer and your
22 wife and counsel, did you discuss the
23 substance of your deposition that took
24 place in December with anyone else?
25 A Not that I -- not that I can

Page 6

1 Peter Shapiro
2 recall.
3 Q Did you discuss it with anybody
4 from Washington TSA?
5 A No.
6 Q Did you discuss it with Jeffrey
7 Hasterok?
8 A No.
9 Q Did you discuss it with Dan
10 Curry?
11 A No.
12 Q And have you testified in any
13 other deposition since that deposition in
14 December?
15 A Could you repeat that.
16 Q Have you sat for any other
17 depositions since that deposition in
18 December?
19 A No.
20 Q And you understand that today
21 you're testifying as an expert witness for
22 Washington TSA?
23 A That's my understanding.
24 Q And what is your understanding
25 of the differences between an expert

Page 7

1 Peter Shapiro
2 witness and a fact witness?
3 MR. LAWRENCE: Objection to the
4 form.
5 A I am not a lawyer. So, you
6 know, my layman's understanding is a fact
7 witness is supposed to testify about things
8 they know that are factual in nature that
9 pertain to the case; and an expert witness
10 is supposed to testify with regard to areas
11 where they have expertise that would
12 pertain to issues that are involved in the
13 case.
14 Q And what areas of expertise are
15 you planning to testify about today?
16 A Agreements of this nature, like
17 the RFA.
18 Q And you consider yourself to be
19 an expert in agreements like the RFA?
20 A Yes.
21 Q And where did you obtain the
22 expertise regarding agreements like the
23 RFA?
24 A Through many years of
25 experience in the market.

Page 8

1 Peter Shapiro
2 Q And, specifically, where did
3 you obtain the experience relating to
4 reserve fund agreements?
5 A As I previously testified, you
6 know, from what has been provided, you
7 know, I have been involved in a variety of
8 different jobs within the financial
9 services industry.
10 My initial positions were with
11 Citigroup. And at that point, this
12 instrument had not -- at the point I worked
13 at Citigroup, this instrument in its
14 specific form that we are talking about
15 didn't exist, but predecessor types of
16 instruments did exist there.
17 But it was not really until
18 later when I was at Euro Brokers that we
19 first started to see these types of
20 agreements in significant numbers. I was
21 exposed to Euro Brokers and then again at
22 Swap Financial Group.
23 Q When you say "these types of
24 agreements," you are referring to reserve
25 fund agreements?

Page 9

1 Peter Shapiro
2 A Reserve fund agreements would
3 fall under a much broader category of
4 agreements that are generally referred to
5 as either forward purchase agreements or
6 forward delivering agreements.
7 And the reserve fund agreement
8 only differs by the fact of what it's
9 applied to. There are similar agreements
10 which are used for many, many other aspects
11 that relate to municipal finance.
12 Q And at Euro Brokers, were you
13 exposed to the subset of forward purchase
14 agreements referred to as reserve fund
15 agreements?
16 A Yes.
17 Q And how many reserve fund
18 agreements did you work on while you were
19 at Euro Brokers?
20 A I don't have any record of
21 that. It's long enough ago that it has
22 faded into the cobwebs of my mind.
23 Q What type of work did you do in
24 connection with reserve fund agreements at
25 Euro Brokers?

Page 10

1 Peter Shapiro
2 A At Euro Brokers, I was the
3 supervisor of the desk, which handled all
4 municipal financial products. And forward
5 delivery agreement, forward purchase
6 agreements were a subset of that.
7 So you saw the -- you know,
8 within the general flow of business, there
9 was -- there were forward delivery
10 agreements including reserve fund
11 agreements.
12 As I have previously testified,
13 within the broader scope of municipal
14 financial products, all of these products
15 that I would characterize as "forward
16 purchase agreements" constitute a fall
17 subset of the total.
18 Q And Euro Brokers, what type of
19 work did the desk do that you supervised at
20 Euro Brokers?
21 A Euro Brokers' specialty was
22 brokering between financial institutions.
23 It was, at the time I was there, one of the
24 top ranked intra-dealer brokers.
25 We expanded during the time I

Page 11

1 Peter Shapiro
2 was there and even a little bit before I
3 got there into directly serving
4 non-financial counterparties like municipal
5 entities. So we served both as
6 intermediary between financial institutions
7 and as an advisor broker on behalf of the
8 municipal entities.
9 Q And while the desk was working
10 as a broker in between financial
11 institutions, did you see reserve fund
12 agreements as part of that flow?
13 A I am not -- I am not recalling
14 if we ever had that Lauri because these
15 aren't -- these vehicles are not traded in
16 significant quantities from financial
17 institution to financial institution.
18 What is traded between the
19 financial institutions are the underlying
20 hedges.
21 Q And when you served the
22 municipalities as a financial advisor,
23 would you assist in placing reserve fund
24 agreements or bidding reserve fund
25 agreements?

Page 12

1 Peter Shapiro
2 A Correct.
3 Q And so you would solicit
4 dealers for -- to be served as a
5 counterparty for a reserve fund agreement?
6 A Yes, or providers as we would
7 call them.
8 Q And did Euro Brokers itself
9 ever provide a reserve fund agreement or
10 respond to a bid for a reserve fund
11 agreement?
12 A No. No, Euro Brokers was an
13 intermediary only, not a broker, not a
14 dealer, if you think about it in those
15 terms.
16 Q So at Euro Brokers you weren't
17 responsible for bidding on reserve fund
18 agreements?
19 A No, we would put them out for
20 the bid.
21 Q And you weren't responsible for
22 pricing reserve fund agreements?
23 A Not in the -- we are not -- not
24 a provider.
25 Q And do you recall -- and you

Page 13

1 Peter Shapiro
2 would have been engaged by the
3 municipalities themselves?
4 A Yes.
5 Q And do you recall --
6 A Or sometimes someone on their
7 behalf. But, yes, you were serving a
8 municipal entity.
9 Q Do you recall how many reserve
10 fund agreements you assisted municipalities
11 with?
12 A I do not.
13 Q Would it have been more than
14 50?
15 A No. The market is not that
16 big.
17 Q So less than ten?
18 A I can't recall. I really
19 honestly can't recall, but it would
20 definitely be less than 50.
21 Q Did you ever assist a tobacco
22 securitization agency with placing a
23 reserve fund agreement?
24 A No.
25 Q Stepping back a few steps, what

Page 14

1 Peter Shapiro
2 did you do to prepare for this expert
3 deposition today?
4 A I tried to think through some
5 of the questions you might have, so I would
6 anticipate them. I reread my deposition
7 from last time.
8 Q Did you meet with counsel?
9 A Yeah, we just had breakfast
10 together.
11 Q And that was your only meeting
12 or only discussion with counsel in advance
13 of this deposition?
14 A We had some E-Mail
15 correspondence and phone calls just in
16 general that had to do with the case.
17 Q All total, getting -- preparing
18 for this expert deposition with counsel,
19 how much time do you think you spent?
20 A Well, rereading the deposition
21 took a while because it was a long
22 deposition. That would have taken up the
23 most time. You know, you had the pleasure
24 of sitting through the deposition, so you
25 know how long it took.

Page 15

1 Peter Shapiro
2 And, you know, Paul and I just
3 had breakfast together for 35 minutes. And
4 we, you know, discussed other matters in
5 the course of our phone calls. I would say
6 we probably spent on the phone call
7 regarding this deposition in all respects
8 less than 15 minutes.
9 Q Other than reviewing your
10 deposition transcript, did you review any
11 other documents to prepare for today's
12 deposition?
13 A No.
14 Q Did you have any discussions
15 with anyone else at Swap Financial to
16 prepare for today's deposition?
17 A No.
18 Q When was the decision made, if
19 you know, to designate you as an expert in
20 this case?
21 A I'm not sure. You know, it's
22 probably better asked of counsel.
23 Q Do you know if that decision
24 happened before or after you were deposed
25 in December?

Page 16

1 Peter Shapiro
2 A It was around that time. I am
3 not sure exactly when.
4 MS. SAWYER: Can you mark this
5 as Shapiro 10.
6 (Exhibit No. Shapiro 10,
7 Document, is marked by the reporter
8 for identification.)
9 Q The court reporter has handed
10 you what has been marked as Shapiro
11 Exhibit 10. I would ask if you have seen
12 this document before.
13 A I don't believe I have.
14 Q Do you recall whether or not
15 you were involved in preparing this
16 document?
17 A I mean, I haven't seen the
18 document before. I can't really speak to
19 that.
20 Q Do you recall having any
21 discussions with counsel about an expert
22 disclosure being made and providing
23 information that might be reflected in that
24 disclosure?
25 A You know, you are using legal

Page 17

1 Peter Shapiro
2 terminology that's not necessarily ones
3 that I use on a regular basis. So I can't
4 recall if we had any specific discussion on
5 this.
6 I see now, in reading the
7 document which you just handed me, certain,
8 you know, statements, factual statements
9 that I provided to counsel.
10 Q And what factual statements do
11 you recall providing to counsel that you
12 are seeing in this document?
13 A Just in that very initial quick
14 scan I did in these last few seconds, I
15 notice under Roman numeral IV, you know,
16 the mention of the chapter I provided in a
17 book, and the references to cases where I
18 have testified.
19 Q And you provided that
20 information to counsel?
21 A Correct.
22 Q When were you hired as an
23 expert witness by Washington TSA?
24 A When was I hired as an expert
25 witness, you know, yeah, not hired -- I

Page 18	Page 20
<p>1 Peter Shapiro 2 don't believe I have been hired separately 3 as for that purpose. I have a general 4 contract with them. 5 Q You have a general contract 6 with Washington TSA? 7 A Yes. 8 Q To provide advisory and 9 valuation services associated with the 10 reserve fund agreement? 11 A It may go beyond that. I'd 12 have to look at the contract in front of 13 me. 14 Q Okay. 15 A In fact, I think it does go 16 beyond that, too, to provide other 17 services. 18 MS. SAWYER: Let's mark them 19 all. 20 Q In fact, you have executed a 21 number of contracts with Washington TSA? 22 A I believe so. That is -- 23 Lauri, just to clarify that, when you say a 24 number of contracts, I think it may be a 25 contract and a number of extensions to be</p>	<p>1 Peter Shapiro 2 Washington TSA for consulting and 3 expert services, is marked by the 4 reporter for identification.) 5 (Exhibit No. Shapiro 15, 6 Agreement between Peter Shapiro and 7 Washington TSA for consulting and 8 expert services, is marked by the 9 reporter for identification.) 10 (Exhibit No. Shapiro 16, 11 Agreement between Peter Shapiro and 12 Washington TSA for consulting and 13 expert services, is marked by the 14 reporter for identification.) 15 A Let me check to see. 16 Q A big pile for you. 17 A 11, 12, 13, 14, 15, and 16. 18 Yes, I have got them all. 19 Q I would like you to review 20 these and let me know if these are the 21 agreements you have with Washington TSA for 22 your services. 23 A Okay. Let me spend a few 24 minutes. 25 Q Sure.</p>
Page 19	Page 21
<p>1 Peter Shapiro 2 more accurate. 3 Q Okay. 4 (There was a discussion off the 5 record.) 6 Q The court reporter has handed 7 you for the record Shapiro Exhibits 11 8 through 16. 9 (Exhibit No. Shapiro 11, 10 Agreement between Peter Shapiro and 11 Washington TSA for consulting and 12 expert services, is marked by the 13 reporter for identification.) 14 (Exhibit No. Shapiro 12, 15 Agreement between Peter Shapiro and 16 Washington TSA for consulting and 17 expert services, is marked by the 18 reporter for identification.) 19 (Exhibit No. Shapiro 13, 20 Agreement between Peter Shapiro and 21 Washington TSA for consulting and 22 expert services, is marked by the 23 reporter for identification.) 24 (Exhibit No. Shapiro 14, 25 Agreement between Peter Shapiro and</p>	<p>1 Peter Shapiro 2 MR. LAWRENCE: Off the record 3 for a second. 4 (There was a discussion off the 5 record.) 6 MS. SAWYER: We are back on the 7 record. 8 Q So you have had a chance to 9 look at Shapiro Exhibits 11 through 16, 10 correct? 11 A 16. 12 Q And you noted off of the record 13 that Shapiro Exhibit 12 appeared to be 14 missing Exhibit B, correct? 15 A Correct. 16 (Exhibit No. Shapiro 17, 17 Exhibit B to Agreement between Peter 18 Shapiro and Washington TSA for 19 consulting and expert services, is 20 marked by the reporter for 21 identification.) 22 Q If you could look at Shapiro 23 Exhibit 17, which is before you, and let me 24 know if you believe that to be Exhibit B 25 that corresponds with Shapiro Exhibit 12.</p>

<p style="text-align: right;">Page 22</p> <p>1 Peter Shapiro</p> <p>2 A It appears to be.</p> <p>3 Q And Shapiro Exhibits 11 through</p> <p>4 16, do those represent the extent of the</p> <p>5 agreements that you have with Washington</p> <p>6 TSA in connection with your services</p> <p>7 provided in connection with this matter?</p> <p>8 A I believe so, Lauri.</p> <p>9 Q You are not aware of any other</p> <p>10 agreements that you have with Washington</p> <p>11 TSA that would relate to your testimony you</p> <p>12 are giving here today?</p> <p>13 A No.</p> <p>14 Q Do you have any separate</p> <p>15 agreements with counsel regarding your</p> <p>16 testimony that you are giving here today?</p> <p>17 MR. LAWRENCE: Only if you</p> <p>18 know.</p> <p>19 A I don't believe so. I don't</p> <p>20 believe so.</p> <p>21 Q And the scope of the services</p> <p>22 that you were engaged to perform on behalf</p> <p>23 of Washington TSA, they would be reflected</p> <p>24 in Shapiro Exhibits 11 through 17, correct?</p> <p>25 A I believe so.</p>	<p style="text-align: right;">Page 24</p> <p>1 Peter Shapiro</p> <p>2 Q Since this disclosure was sent</p> <p>3 in 2013, have you engaged and incurred</p> <p>4 additional fees on behalf of Washington</p> <p>5 TSA?</p> <p>6 A Yes.</p> <p>7 Q And what amount?</p> <p>8 A I have to look it up.</p> <p>9 Q Have you sent invoices to</p> <p>10 Washington TSA for those funds?</p> <p>11 A We invoice monthly.</p> <p>12 Q Of this \$155,300, how much of</p> <p>13 those fees would have been incurred in</p> <p>14 connection with the preparation of your</p> <p>15 expert opinion in this case?</p> <p>16 MR. LAWRENCE: Object to the</p> <p>17 form.</p> <p>18 A I don't believe we have ever</p> <p>19 broken that out.</p> <p>20 Q Do you have a sense of what</p> <p>21 percentage of your time you would attribute</p> <p>22 to your expert -- formulating your expert</p> <p>23 opinion in this case?</p> <p>24 MR. LAWRENCE: Object to the</p> <p>25 form.</p>
<p style="text-align: right;">Page 23</p> <p>1 Peter Shapiro</p> <p>2 Q Was there an RFP process run in</p> <p>3 connection with your engagement as an</p> <p>4 expert witness for Washington TSA?</p> <p>5 MR. LAWRENCE: Object to the</p> <p>6 form.</p> <p>7 Q You can answer.</p> <p>8 A I can answer? Okay. Not that</p> <p>9 I'm aware of.</p> <p>10 Q Were you aware of any RFP</p> <p>11 process run to hire any of the experts that</p> <p>12 Washington TSA has designated in connection</p> <p>13 with this case?</p> <p>14 A I'm not aware of any.</p> <p>15 Q In your expert disclosure,</p> <p>16 which is Shapiro Exhibit 10, if you look at</p> <p>17 paragraph Roman numeral VI on page two, the</p> <p>18 very last line of page two.</p> <p>19 A Page two. Yes.</p> <p>20 Q And that indicates that you</p> <p>21 have been paid approximately \$155,300 in</p> <p>22 connection with the litigation mediation of</p> <p>23 this matter since your retention in</p> <p>24 December of 2008, correct?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 Peter Shapiro</p> <p>2 A I do not.</p> <p>3 Q Does that \$155,000 does that</p> <p>4 include the analysis of reinvestment</p> <p>5 options that you did for Washington TSA?</p> <p>6 A I would have to go back and</p> <p>7 look at how that number was derived, but,</p> <p>8 you know, we have charged also for that.</p> <p>9 It may be within that number. It may not</p> <p>10 be.</p> <p>11 Q So you don't -- do you know</p> <p>12 what's included in this number? You have</p> <p>13 provided a number of services for</p> <p>14 Washington TSA. Do you know if this is a</p> <p>15 cumulative number or a number just</p> <p>16 associated with some subset?</p> <p>17 A It says here that it's</p> <p>18 associated with the litigation and</p> <p>19 mediation. It's possible that the -- that</p> <p>20 the issues that you are asking about,</p> <p>21 looking for a substitute reinvestment</p> <p>22 options fell within that. It's also</p> <p>23 possible it fell outside of that.</p> <p>24 Q Do you know who calculated this</p> <p>25 number?</p>

Page 26

1 Peter Shapiro
2 A I believe that we did at the
3 request of the agency or at the request of
4 counsel. That's what I would believe.
5 Q And when you say "we," you are
6 referring to Swap Financial?
7 A Yes.
8 Q And do you recall what you were
9 requested to calculate?
10 A Not off the top of my head.
11 Q Do you know if that number
12 includes amounts incurred by Swap Financial
13 in responding to the subpoena in connection
14 with this matter?
15 A Yes.
16 Q It does include those?
17 A It would include that, yes.
18 Q So you are just not sure if it
19 includes the analysis of reinvestment
20 options?
21 A Right.
22 Q Are there other services that
23 you provide to Washington TSA that you
24 don't know whether are covered in this
25 number?

Page 27

1 Peter Shapiro
2 A It reads, "in connection with
3 litigation and mediation of this matter,"
4 so that there were prior services that we
5 were doing around the termination, which
6 may not be covered by that, before the
7 commencement of the dispute by Lehman.
8 Q When would you indicate that
9 the dispute with the Lehman commenced?
10 A I have to look back at my
11 records; but, you know, there was at some
12 point the Lehman estate said it was going
13 to dispute. Whether we -- whether this
14 includes when that first occurred verbally
15 or any indications of that or whether this
16 was after the first legal documents would
17 have indicated that, you know, I'd have to
18 go back and look.
19 Q But you would have records that
20 would indicate what is included in that
21 number?
22 A Correct. I would be able to
23 look back at what date it began.
24 Q And you would be able to look
25 back and see what you included in the

Page 28

1 Peter Shapiro
2 calculation of this number?
3 A Yes.
4 MS. SAWYER: I'd request a copy
5 of those records so we can try to
6 ascertain what went into the
7 calculation of this number.
8 MR. LAWRENCE: Well, I guess,
9 just to clarify, is there -- did you
10 do a separate document to calculate
11 this number, or did you look at your
12 invoices?
13 THE WITNESS: Just look at the
14 invoices.
15 MR. LAWRENCE: I think you have
16 the invoices.
17 MS. SAWYER: We will mark the
18 invoices we have. There are seven of
19 them.
20 (Exhibit No. Shapiro 18,
21 Invoice from Mr. Shapiro to Washington
22 TSA for services performed, is marked
23 by the reporter for identification.)
24 (Exhibit No. Shapiro 19,
25 Invoice from Mr. Shapiro to Washington

Page 29

1 Peter Shapiro
2 TSA for services performed, is marked
3 by the reporter for identification.)
4 (Exhibit No. Shapiro 20,
5 Invoice from Mr. Shapiro to Washington
6 TSA for services performed, is marked
7 by the reporter for identification.)
8 (Exhibit No. Shapiro 21, 7/8/13
9 Invoice from Mr. Shapiro to Washington
10 TSA for services performed, is marked
11 by the reporter for identification.)
12 (Exhibit No. Shapiro 22,
13 7/12/13 Invoice from Mr. Shapiro to
14 Washington TSA for services performed,
15 is marked by the reporter for
16 identification.)
17 (Exhibit No. Shapiro 23,
18 Invoice from Mr. Shapiro to Washington
19 TSA for services performed, is marked
20 by the reporter for identification.)
21 (Exhibit No. Shapiro 24,
22 9/28/13 invoice from Mr. Shapiro to
23 Washington TSA for services performed,
24 is marked by the reporter for
25 identification.)

Page 30

1 Peter Shapiro
2 Q The court reporter has handed
3 you a set of exhibits marked Shapiro 18
4 through Shapiro 24, which are copies of
5 invoices that have been produced in this
6 litigation to us from Swap Financial Group.
7 A Um-hum.
8 Q The last one we have, Shapiro
9 24, is dated September 27, 2013; do you see
10 that?
11 A Yes.
12 Q Have subsequent invoices been
13 provided to Washington TSA since
14 September 27, 2013?
15 A Yes -- I'm sorry to interrupt
16 you. Yes.
17 MS. SAWYER: I would request a
18 copy of invoices subsequent to
19 September 27, 2013.
20 MR. LAWRENCE: Yes.
21 Q You indicated that you invoiced
22 on a monthly basis, correct?
23 A We began to invoice on a
24 monthly basis sometime, I think, in late
25 2013.

Page 31

1 Peter Shapiro
2 Q Okay. And Shapiro Exhibit 18
3 through 24, do you believe these to be
4 accurate copies of the invoices you
5 provided to Washington TSA?
6 A I can't imagine anyone would
7 have gone through the effort to try to
8 forge our invoices, so I would believe they
9 are accurate.
10 Q They look to be in the form
11 that you would have provided them to
12 Washington TSA?
13 A Exactly.
14 Q Can you turn to Shapiro
15 Exhibit 22. I'm sorry. Yes. Shapiro
16 Exhibit 22, which is dated July 12, 2013,
17 do you see that?
18 A Yes.
19 Q It indicates it's for advisory
20 services for the period March 1, 2013, to
21 June 30, 2013; do you see that?
22 A Yes.
23 Q If you look back at Shapiro
24 Exhibit 21, that one is dated July 8, 2013,
25 and also indicates that it's for advisory

Page 32

1 Peter Shapiro
2 services for the period March 1, 2013, to
3 June 30, 2013.
4 Do you see that?
5 A Yes.
6 Q Are both Shapiro Exhibit 21 and
7 Shapiro Exhibit 22 operative invoices?
8 A I don't know. You know, my
9 colleague Lillian Chern has handled the
10 invoicing, you know, to the Authority.
11 So, you know, when I look at
12 these two side-by-side, they are covering
13 the same period. They have different
14 amounts of hours. I would have to figure
15 out what is going on here.
16 Q You don't know if they are
17 cumulative or if Shapiro 22 replaces
18 Shapiro 21?
19 A I would only be guessing.
20 Q And Ms. Chern would know the
21 answer to that?
22 A Yes.
23 Q Okay. And if you look at
24 Shapiro Exhibit 22, it indicates that
25 68 hours were spent by a managing director;

Page 33

1 Peter Shapiro
2 do you see that?
3 A Correct.
4 Q Does that refer to you,
5 Mr. Shapiro?
6 A Lillian's title is also
7 managing director. She was promoted to
8 that title, I think, at the end of 2012.
9 So she would also be included in that.
10 Q So that 68 hours would both
11 include both yours and Ms. Chern's hours?
12 A Yes.
13 Q Since she became a managing
14 director?
15 A Correct.
16 Q If you look on the second page
17 of Shapiro Exhibit 22, I think it's on the
18 backside.
19 A Okay.
20 Q It's a breakdown of hours by
21 category; do you see that?
22 A Yes.
23 Q And the third category is
24 "document review"; and it appears to be
25 12 hours?

Page 34

1 Peter Shapiro
2 A Right.
3 Q What documents were being
4 reviewed in the period of March 1, 2013, to
5 June 30, 2013?
6 A I would have to go back and
7 look. As I sit here, I have no idea what I
8 did that month --
9 Q Okay.
10 A -- or that multi-month period.
11 Q And what would you need to look
12 at -- to determine what documents you
13 reviewed?
14 A Normally, what I would look at
15 is my E-Mail records and my calendar.
16 Q And you have no idea at all
17 what you spent 12 hours reviewing during
18 that time period?
19 A No, as I sit here, no.
20 Q Okay. The next category is
21 "quantitative analysis"?
22 A Right.
23 Q And you spent -- you and
24 Mrs. Chern sent 11 hours doing quantitative
25 analysis during that time period. What

Page 35

1 Peter Shapiro
2 analysis was being done?
3 A I have the same answer I would
4 just be speculating, Lauri.
5 Q Okay. And then the last
6 category is "communication with mediator";
7 do you see that?
8 A Correct.
9 Q Two hours spent on that?
10 A Right.
11 Q Were those communications that
12 you had with the mediator?
13 A Communications that we would
14 have been involved in in some way.
15 Q Okay. My question was:
16 Were those communications that
17 you personally had with the mediator?
18 A Those would have -- you know,
19 again, I would be speculating, but the --
20 logically, they would be me, not Lillian.
21 Q Okay. Were other members of
22 Washington TSA or counsel involved at those
23 calls with the mediator?
24 A It doesn't say "call."
25 Q Communications?

Page 36

1 Peter Shapiro
2 A It was most likely E-Mails.
3 Q Do you know for sure whether
4 those were E-Mails or calls?
5 A No, I am just looking at the
6 fact that "communication" would normally
7 imply they were E-Mails or not calls.
8 Otherwise, it would say "discussion" or
9 something like that.
10 Q And you recall spending two
11 hours E-Mailing with the mediator?
12 A Reading, reviewing, composing,
13 that would all come within that.
14 Q And those would have been
15 communications that you personally had the
16 mediator?
17 A Yeah, or that I was involved in
18 with the mediator, with lawyers, or others.
19 Q So it would include
20 communications with others, not just you
21 personally?
22 A Correct.
23 Q What would you need to look at
24 to identify what quantitative analysis took
25 place from the period of March 1, 2013, to

Page 37

1 Peter Shapiro
2 June 30, 2013?
3 A The same thing, E-Mail records,
4 calendar log, stuff like that, and my
5 calendar. That's how I would do it.
6 Q What sort of calendar log do
7 you keep?
8 A I keep it in Outlook, just a --
9 you know, basically a listing of what the
10 events were that day.
11 Q And do you keep track of the
12 time spent on certain matters?
13 A Not with the same detail that a
14 law firm does.
15 Q But do you keep track of the
16 time spent on certain matters?
17 A Only -- only generally.
18 Q And how do you keep track of
19 that?
20 A I indicate on my calendar
21 virtually always the start time. It may
22 not have the end time accurately. If you
23 have used Outlook, it normally -- it
24 normally -- as it defaults, selects
25 half-hour intervals, or it may select hour

Page 38

1 Peter Shapiro
2 intervals.
3 And, you know, if a -- if a
4 call was scheduled for 11:00 a.m., I'd put
5 it in to start at 11:00 a.m.; but I
6 wouldn't -- it wouldn't indicate the end
7 time. I would never go back and say:
8 "Gee, that call didn't take a
9 half an hour. It took an hour and a half."
10 Q So in preparing your invoices
11 to determine that 12 hours were spent by
12 you and Mrs. Chern reviewing documents,
13 what records would you look at to determine
14 that?
15 MR. LAWRENCE: Now, or you are
16 asking now, or -- are you asking then
17 or now?
18 Q At the time, when you were
19 preparing this invoice?
20 A The same answer as before.
21 Q You would look at your calendar
22 to determine how much time was spent doing
23 the document review?
24 A And the E-Mails, yeah.
25 Q And do you keep track of that

Page 39

1 Peter Shapiro
2 on a daily basis or just at the time that
3 the invoice is to be prepared?
4 A At the time the invoice is
5 prepared.
6 Q Do you know how Ms. Chern keeps
7 track of her time to be invoiced?
8 A No, I don't.
9 Q If you look at the next
10 exhibit, Shapiro Exhibit 23, this appears
11 to be advisory services for a single month
12 of July of 2013.
13 Do you see that?
14 A That's how it reads.
15 Q And it indicates two hours of
16 document review took place in that month.
17 Do you see that?
18 A Yes.
19 Q Do you know what documents were
20 being reviewed in that month?
21 A Last July, I don't know.
22 Q And then the next invoice we
23 have, Shapiro Exhibit 24, also indicates
24 that it provides advisory services for
25 July 2013 in the "Re:" line.

Page 40

1 Peter Shapiro
2 Do you see that?
3 A Yes.
4 Q Although the description of
5 work appears to be August dates. Do you
6 see that?
7 A Yes.
8 Q Do you know whether or not this
9 invoice applies to July or August of 2013?
10 A My suspicion is that it applies
11 to August that the -- Lillian, when she
12 submitted, just failed to change the date
13 on the line that says "Re" colon.
14 Q Since September 2013, you have
15 indicated that there have been additional
16 invoices submitted to Washington TSA,
17 correct?
18 A You asked that already, and I
19 answered that already.
20 Q And you believe those to be on
21 a monthly basis?
22 A I know we went to monthly at
23 some point in late 2013.
24 Q You have been designated as an
25 expert witness before?

Page 41

1 Peter Shapiro
2 A Yes.
3 Q In what matters?
4 A In a number of matters, some of
5 which did not go through, you know, to
6 litigation.
7 Q There are two disclosed in
8 your -- in the expert disclosure which is
9 Shapiro Exhibit 10, if we could look at
10 that.
11 A Get back to 10, again. Is this
12 10? Yes. Keep these in order.
13 Q 5A refers to a case that starts
14 "Heyman Investment Associates." What was
15 this case about?
16 A This case was about a credit
17 derivative.
18 Q A single credit derivative?
19 A It was actually two -- two
20 credit derivatives. It covered two major
21 credits. There may have been multiple
22 contracts, but, you know, they had to deal
23 with two specific corporate credits.
24 Q What was the dispute?
25 A The dispute was having to do

Page 42

1 Peter Shapiro
2 with -- let me express this correctly.
3 Heyman had failed to post
4 collateral upon a collateral call, at which
5 point Credit Suisse had terminated the
6 contract; and Heyman was contesting the
7 termination and the amount that was owed.
8 Q And you testified on behalf of
9 Credit Suisse?
10 A That's correct.
11 Q And what was the subject of
12 your testimony?
13 A Practices under ISDA agreements
14 and, you know, looking at the -- some of
15 the issues involved with the valuation.
16 Q Did you calculate a valuation?
17 A I did part of that, part of the
18 practices on that. There was a second
19 expert also involved.
20 Q And this was a FINRA
21 arbitration?
22 A That's correct.
23 Q And did it go to hearing before
24 either a single arbitrator or a panel of
25 arbitrators?

Page 43

1 Peter Shapiro
2 A A three -- a three-judge panel.
3 Q And where was that?
4 A In New York.
5 Q And did you testify before the
6 panel?
7 A Yes.
8 Q How long did you testify?
9 A It was about half a day.
10 Q Do you have a copy of your
11 testimony?
12 A I believe I do.
13 Q Were you also deposed in
14 connection with this arbitration?
15 A I am trying to remember. I am
16 not certain. It may have just been the
17 actual testimony.
18 Q Were there any challenges
19 raised to your qualifications as an expert?
20 A Yes.
21 Q And what were those challenges?
22 A The opposing counsel was, as
23 opposing counsel virtually always does, was
24 trying to, you know, find any way they
25 could say that you, you know, weren't

Page 44

1 Peter Shapiro
2 qualified to do this.
3 As I recall, the major thing
4 that they were trying to do was that we
5 didn't have specific experience in the
6 London equity derivatives market because
7 these were London-traded contracts.
8 Q When you said "we," were you,
9 Mr. Shapiro, designated as an expert?
10 A Yes, I was. So when I say
11 "we," I meant my firm; but, you know, my
12 expertise came from my work at the firm.
13 Q And was this challenge to your
14 qualifications, was that made in writing or
15 orally?
16 A Orally.
17 Q And did the panel rule on that
18 challenge?
19 A No.
20 Q Why didn't they rule on it?
21 A It resulted -- the result was a
22 settlement.
23 Q So the panel didn't make a
24 decision in the arbitration?
25 A Not at all. And -- nor, Lauri,

Page 45

1 Peter Shapiro
2 was the panel -- was any -- was anything
3 asked of the panel to rule on any kind of a
4 question like this.
5 This was simply what I would
6 call the normal jousting that goes on
7 between opposing counsel and any expert to
8 try to in some way lessen the impact of
9 testimony by the opposing side's experts.
10 Q The second listing under
11 paragraph five of Shapiro Exhibit 10 refers
12 to a SEC case involving LaCroix and
13 McFadden?
14 A Correct.
15 Q And you testified there on
16 behalf of the SEC as an expert?
17 A Correct.
18 Q And what was the subject of
19 your expert testimony?
20 A It was with regard to the
21 composition and basis of a floating rate.
22 Q What was the context that a
23 floating rate needed to be determined?
24 A The floating rate was already
25 determined. It was -- it was really just

Page 46

1 Peter Shapiro
2 questions about what was the nature of that
3 floating rate.
4 Q What was the nature of the case
5 that you were involved with?
6 A This has -- had to do with a --
7 a famous controversy in the market,
8 Jefferson County, Alabama, one of -- you
9 know, the single largest scandal in the
10 municipal market.
11 Q And specifically what was this
12 dispute involving Mr. LaCroix and
13 Mr. McFadden about?
14 A SEC has asserted that LaCroix
15 and McFadden, two senior employees of JP
16 Morgan, were -- had committed fraud, which
17 would be covered under the SEC's
18 jurisdiction.
19 Q And what was the nature of the
20 fraud alleged against them?
21 A The fraud, I'd have -- I'd have
22 to look back at how they spell out the
23 legal nature of the fraud. It's not -- not
24 my expertise.
25 The thing they were -- the

Page 47

1 Peter Shapiro
2 issue had to do with whether SEC had
3 jurisdiction, and that jurisdiction was
4 determined by the nature of the floating
5 rate.
6 Q Explain to me why the nature of
7 the floating rate implicated the SEC's
8 jurisdiction.
9 A There is a split jurisdiction
10 over -- among which federal agency matters,
11 depending upon whether the swap is deemed
12 to be a security-based swap or a
13 non-security-based swap.
14 In the case of this swap -- and
15 there were actually multiple swaps here --
16 the swap that was germane to this specific
17 argument was a swap based on the SIFMA
18 index, S-I-F-M-A, which is an acronym is
19 that stands for the Securities Industry and
20 Financial Markets Association Index -- was
21 previously known as the BMA Index or Bond
22 Market Association Index. Prior to that,
23 it was called PSA Index or Public
24 Securities Association Index.
25 Q So what was your testimony

Page 48

1 Peter Shapiro
2 about the nature of the floating rate?
3 A The issue is whether the index
4 is an index of interest rates or an index
5 of securities. If it's deemed to be an
6 index of securities, then the swap can be
7 thought of as a security-based swap.
8 If it's merely an index of
9 interest rates, then questions are raised
10 about the SEC -- whether the SEC has
11 jurisdiction and whether they can assert
12 fraud against these two individuals.
13 Q And your opinion was what?
14 A My opinion was that this is a
15 security-based index and the SEC therefore
16 has jurisdiction.
17 Q And did the court adopt your
18 view?
19 A It is still pending.
20 Q And was there any challenge,
21 has any challenge been raised to your
22 qualifications as an expert in this case?
23 A I'm not recalling, but I can't
24 imagine there is not. Opposing counsel
25 always tries to find something.

Page 49

1 Peter Shapiro
2 Q And you said that this case is
3 still pending?
4 A Yes.
5 Q And where is it pending?
6 A Is it in here? You could look
7 that up. It's -- I testified in
8 Washington. I think jurisdiction is under
9 whatever courts cover Florida -- it
10 could -- you know, Florida, Louisiana. I'm
11 not sure. You have to look.
12 Q Okay. We actually have looked.
13 So do you know where this case is pending?
14 A No. Why don't you tell me?
15 Q I don't know. We haven't been
16 able to locate it.
17 A You haven't been able to locate
18 it. Oh, really. Okay. That's
19 interesting. I can --
20 Q So do you have records that
21 would indicate where it's pending?
22 A Yes, yes.
23 MS. SAWYER: I'd request that
24 we be provided that information.
25 MR. LAWRENCE: Sure.

Page 50

1 Peter Shapiro
2 Q Other than --
3 A You know, if I can, you know,
4 this case is tied up in a -- this is a very
5 large scandal. You know, JP Morgan itself
6 has already paid close to billion dollars
7 related to this scandal.
8 It's caught up between -- to a
9 certain extent, there have been delays that
10 have had to do with criminal versus civil
11 charges in this case. So, you know, there
12 are reasons this has gone on and is as
13 complicated as I am describing.
14 MR. LAWRENCE: Just for your
15 information, it looks like from a
16 brief Google search. It's in the
17 Northern District of Alabama.
18 THE WITNESS: Makes sense.
19 MR. LAWRENCE: Number CV 09 U/V
20 2238-S.
21 Q Other than these two cases,
22 have you also testified as an expert
23 before?
24 A It says here these were the
25 ones in the last four years. I am trying

Page 51

1 Peter Shapiro
2 to remember if there was something more
3 than four years ago, and I am not
4 remembering.
5 Q You don't recall any other time
6 that you have been designated as an expert
7 witness?
8 A "Designated" would be different
9 than "testified."
10 Q Do you recall other times that
11 you have been designated as an expert
12 witness in litigation?
13 A When you are designated -- just
14 to clarify your question -- when you are
15 retained by a client to serve as expert
16 witness?
17 Q No, when a formal disclosure
18 has been made, as we have seen in this
19 case. Have there been other instances
20 where you have been designated as an
21 expert?
22 MR. LAWRENCE: Like disclosed
23 to the other party.
24 Q Yes, disclosed to the other
25 side.

Page 52

1 Peter Shapiro
2 A I'm not certain because, you
3 know, that's part of the legal process. I
4 know we have been retained as expert
5 witnesses in other cases.
6 Q And have you been retained as
7 expert witnesses in other cases within the
8 last four or five years?
9 A Yes.
10 Q And what cases are those?
11 A I have to try to pull that
12 together for you.
13 Q Okay. That's not information
14 that you know sitting here?
15 A Off the top of my head, I'd
16 have to go back. The truth is, since the
17 financial crisis, there have been so many
18 disputes where I get contacted so
19 frequently on this kind of stuff.
20 Q And have you testified other
21 than these two instances as an expert
22 witness?
23 A No.
24 Q Either within or without four
25 years?

Page 53

1 Peter Shapiro
2 A Not that I can recall prior to
3 four years ago.
4 Q And when you were deposed in
5 December, you indicated that you have
6 testified in financial matters
7 approximately five to ten times?
8 A Yes.
9 Q And in those other financial
10 matters, you weren't testifying as an
11 expert witness?
12 A I think generally as a fact
13 witness.
14 Q And how would the testimony
15 come about that you would be testifying as
16 a fact witness?
17 A There would be a lawsuit
18 brought by one party or the other, and I
19 would be deposed.
20 Q And those would have been
21 situations where you have been engaged as a
22 financial advisor?
23 A Generally.
24 Q What other situations?
25 A Besides as a financial advisor,

Page 54

1 Peter Shapiro
2 I can't think of -- I can't think of other
3 ones. I am just trying to think if there
4 is a case where that would be.
5 There was one case that I
6 mentioned in my deposition. It involved
7 the Port Authority of New York and
8 New Jersey, where I wasn't a financial
9 advisor.
10 Q In what capacity were you
11 testifying in that case?
12 A In that case, it went back to
13 my days as a governmental officer; but it
14 was a dispute that occurred much later.
15 Q And what cases --
16 A It was a financial issue. It
17 was much later.
18 Q And in the other cases where
19 you have testified as a financial advisor,
20 how many cases has that been?
21 A I would have to go back and
22 look.
23 Q Do you recall any of those
24 cases sitting here today?
25 A Where I have been deposed, I

Page 55

1 Peter Shapiro
2 have been deposed a number of times. And
3 I'm not recalling. I really would have to
4 go back.
5 Q So you don't recall sitting
6 here today any other specific instances
7 where you have been deposed?
8 A I know there have been other
9 instances, but I'm not recalling.
10 Q Do you recall any other
11 instances where you have testified at an
12 arbitration hearing or trial?
13 A Arbitration or trial, I don't
14 believe so.
15 Q I want to ask you some
16 questions about your background. Where did
17 you go to college?
18 A Harvard University.
19 Q And when did you graduate?
20 A 1974.
21 Q And what's your degree in?
22 A My degree is a -- is a
23 bachelor's degree. It's rou -- Harvard has
24 a funny practice in that it's -- I was in
25 a -- a -- what you call -- Harvard calls a

Page 56

1 Peter Shapiro
2 "concentration," what most of the world
3 calls a "major" -- called social studies,
4 which was an honors department.
5 If you had did write a thesis,
6 they would make your degree what they
7 called "general studies"; so the way my
8 degree reads in the record is, "Cum laude
9 general studies," which was the practice
10 then if you didn't write a thesis.
11 My department, though, that I
12 was in, was called social studies, which
13 was economics, history, social theory, a
14 con -- an interdisciplinary department.
15 That's why it's called social studies.
16 Q And how many economics classes
17 did you take as part of your undergraduate
18 program?
19 A I would guess four. I would
20 have to go back and look, but I am guessing
21 four.
22 Q Did you take any finance
23 classes at Harvard?
24 A Harvard, as an undergraduate,
25 didn't offer finance classes. It was

Page 57

1 Peter Shapiro
2 considered to be a -- a, you know, crude
3 and mean and dirty practice that had to do
4 with a career and not intellectual studies.
5 Q So you didn't take any
6 financial classes?
7 A No. You had to go to graduate
8 school to do that or, as they would see it,
9 a trade school.
10 Q What about mathematics? How
11 many of --
12 A I am being sarcastic for the
13 record.
14 Mathematics? All of my
15 mathematics courses were in high school.
16 Q Did you take any classes in
17 econometrics at Harvard?
18 A Econometrics was part of what
19 my economics curriculum included.
20 Q Did you take a specific class
21 in econometrics?
22 A Not one that was designated as
23 econometrics, per se.
24 Q And in these classes, economics
25 classes you took, did you cover valuation

Page 58

1 Peter Shapiro
2 methodologies for financial contracts?
3 A No.
4 Q And did you discuss concepts
5 such as yield curves or forward curves?
6 A Only in general terms. It's
7 interesting you should ask this because one
8 of the things that I have gone back and
9 done is look at the Harvard curriculum
10 since I've graduated and said:
11 "Do they offer anything in that
12 area for undergraduates?"
13 And by and large, they do not.
14 Q And after your undergraduate
15 studies at Harvard, did you go on to a
16 trade school?
17 A No.
18 Q Did you go on to any graduate
19 school?
20 A I did a special summer program
21 for state and local government officials at
22 Harvard, at the Harvard Kennedy School, you
23 know, the Kennedy School of Government.
24 Q And that was just a summer
25 program?

Page 59

1 Peter Shapiro
2 A Correct, what they call, you
3 know, a senior executives program.
4 Q And when did you do that?
5 A Summer of '79 is my
6 recollection.
7 Q And what types of courses did
8 you take during that senior executive
9 program?
10 A They ran an integrated
11 curriculum with the Kennedy School and some
12 participation from the business school.
13 And it covered a broad range of topics from
14 decision-making to finance to -- to other
15 topics that they thought were germane for a
16 senior executive to know.
17 Q Do you have an MBA?
18 A No.
19 Q And after you graduated from
20 Harvard, what did you do in terms of
21 employment?
22 A I was elected to the state
23 legislature in New Jersey. Then I
24 subsequently was elected as the county
25 executive of Essex County, New Jersey. And

Page 60

1 Peter Shapiro
2 then I went into finance after that. And
3 then I went to work for Citigroup after
4 that.
5 Q When you were -- what year were
6 you elected to the state legislature?
7 A 1975.
8 Q And what was your role at the
9 state legislature?
10 A Member of the state, the
11 general assembly, you know, the lower
12 house. I was too young to be a member of
13 the upper house.
14 Q Did you serve on any
15 committees?
16 A Yes.
17 Q Which committees?
18 A I served on the joint
19 appropriations committee, which is the
20 budget committee. I served on the housing
21 committee. I am trying to remember. There
22 was a -- there was probably one other
23 committee I served on.
24 Q Were you involved in any bond
25 issuances while a member of the state

Page 61

1 Peter Shapiro
2 legislature?
3 A The legislature doesn't get
4 involved in bond issuances, and the closest
5 would be -- on appropriations, you're
6 involved in finance; and, you know, that
7 was one of the reasons I was on that is
8 because I was thought of as being good with
9 numbers.
10 Q Any exposure to the municipal
11 reinvestment market while at the state
12 legislature?
13 A No, I'm not even sure it
14 existed when I was in the state
15 legislature.
16 Q And then you said you became a
17 county executive?
18 A Yes.
19 Q At an elected position?
20 A Correct.
21 Q And what was your -- what were
22 your duties as county executive?
23 A County executive is like a
24 mayor or a governor of the county. So it's
25 a -- for those who are experts in

Page 62

1 Peter Shapiro
2 government, what is called a "strong mayor"
3 form of government. I was the chief
4 executive officer elected.
5 Q And you served that for two
6 terms?
7 A Two terms.
8 Q Did you have any exposure to
9 bonds issuances in that role?
10 A Yes.
11 Q And what type of exposure?
12 A Essex County is the largest
13 local government in New Jersey. It issued
14 bonds itself as well as through an
15 authority, whose members I appointed.
16 Q And in connection with those
17 bond issuances, did it enter into
18 reinvestment agreements?
19 A I believe so. But I would have
20 to go back and look.
21 Q What would --
22 A You know, by the -- by the
23 period of time I was county executive, some
24 of the tools that we would consider to be
25 modern tools of public financing had just

Page 63

1 Peter Shapiro
2 begun to be used.
3 Q What do you mean by "modern
4 tools of public financing"?
5 A Things like GICs and, you know,
6 reinvestments, G-I-C.
7 Q What role as county executive
8 would you have played in connection with
9 these reinvestment alternatives?
10 A I would have been involved in
11 discussions about them. You know, the
12 appointed officials who were responsible of
13 these areas knew I had a keen interest in
14 these things; so they would have discussed
15 with me in some detail the -- you know, the
16 specifics of the financing.
17 Q Do you recall specific
18 discussions of certain financings?
19 A Yes.
20 Q What do you recall?
21 A I recall specifically a couple
22 of complex financings that we were involved
23 in.
24 Q Which ones?
25 A One had to do with a pooled

Page 64

1 Peter Shapiro
2 loan program. And another one had to do
3 with a complex sale leaseback.
4 Q And these would have been
5 financings not related to bond issuances?
6 A No, these were related to bond
7 issuances.
8 Q And how --
9 A The first related to a bond
10 issuance. The second would have had a
11 number of different pieces that may have
12 included a bond issuance. But that second
13 one never advanced.
14 Q How did the pooled loan program
15 interact with the bond issuance?
16 A The pooled loans were financed
17 through a bond issuance.
18 Q So these weren't reinvestment
19 type contracts?
20 A There would have been a
21 reinvestment contract within the pooled
22 loan program.
23 Q Do you recall being involved in
24 those discussions?
25 A In general.

Page 65

1 Peter Shapiro
2 Q And do you recall what type of
3 reinvestment vehicle was used?
4 A No.
5 Q And then you said after that
6 you joined Citibank?
7 A Correct.
8 Q And what was your role at
9 Citibank?
10 A I was brought in as vice
11 president in the municipal bond slash
12 public finance department.
13 Q And what specifically did you
14 do?
15 A I was hired in the spring of
16 1987. And my mandate was to try to help
17 the bank build its negotiated public
18 finance effort to get more -- to be
19 retained to bring more negotiated bond
20 offerings to market. That was, you know,
21 my initial job, and that changed
22 subsequently.
23 Q And what did it change to?
24 A There was a financial crisis,
25 not like our modern one, that occurred in

Page 66

1 Peter Shapiro
2 that fall. You will recall probably -- I'm
3 not going to presume what -- how old you
4 are, Lauri.
5 But you will either recall from
6 your history books or personal experience
7 that there was a big meltdown in the
8 markets in late '87, the largest crash in
9 point terms in the -- in the stock markets.
10 It was actually preceded a
11 month earlier by a similar crash in the
12 bond markets.
13 That resulted in a big series
14 of changes that many of the major
15 Wall Street banks went through. And when
16 that occurred at Citibank, they decided to
17 shake up the municipal bond area, similar
18 to what Salomon Brothers had done.
19 And they fired the guy who was
20 the head of the public finance department,
21 fired the guy who was the head of the
22 municipal bond department; and I was
23 promoted to be head of the public finance
24 department.
25 Q And what was your role once you

Page 67

1 Peter Shapiro
2 were promoted to be the head of the public
3 finance department?
4 A I was to supervise all the area
5 in terms of the -- what would be referred
6 to as the banking function on municipal
7 bonds.
8 Q The banking function being the
9 issuance and underwriting of municipal
10 bonds?
11 A Origination of bonds, securing
12 bond mandates, all of the work that a
13 banker does. So it was -- you know, it was
14 flattering after having only been there for
15 less than a year that they promoted me to
16 head of the department.
17 Q Were -- was there a municipal
18 derivatives desk at this time?
19 A There was not a separate
20 municipal derivatives desk, but we had a
21 very active presence in municipal
22 derivatives.
23 Q And would that have been under
24 your heading?
25 A Yes. General, my heading and a

Page 68

1 Peter Shapiro
2 head of the bond department, the two of us
3 working together.
4 Q And what sort of municipal
5 derivatives were you involved with while
6 you were at Citibank?
7 A Both swaps and something called
8 tender option bonds.
9 Q But no reserve fund agreements
10 yet?
11 A The area of reinvest had been
12 separate when I was hired. But as I
13 mentioned, the head of the public finance
14 department, the head of the municipal bond
15 department, were both fired and both
16 replaced. I was brought in as the head of
17 public finance.
18 The fellow who had run the
19 municipal re-investor, he was brought in as
20 head of the bond department. We worked --
21 (There was a discussion off the
22 record.)
23 A -- had run the reinvest
24 business was brought in as head of the bond
25 department. The head of the bond

Page 69

1 Peter Shapiro
2 department, the head of public finance
3 are -- are -- go together on a day-to-day
4 basis. You are working hand in glove.
5 And so at that point,
6 reinvestment was brought in so that was
7 where my first familiarization came in.
8 Again, that's late '87, early '88.
9 Q And at that time was the
10 reinvestment -- municipal reinvestment
11 group at Citibank, were they actively
12 becoming providers of reserve fund
13 agreements?
14 A My recollection is that reserve
15 fund agreements were -- as I mentioned
16 earlier, the broader category of forward
17 purchase agreements, forward supply
18 agreements, forward delivery agreements --
19 call them what you will -- really began in
20 the early '90s. And Citi was an early
21 mover in that business.
22 Q And were you involved in
23 securing those early reserve fund
24 agreements?
25 A To a certain extent. It was a

Page 70

1 Peter Shapiro
2 team effort, but I was involved in, you
3 know, early discussions on that.
4 Q And early discussions as to
5 whether or not that was something Citibank
6 wanted to be involved with?
7 A Product design, you know, risk
8 analysis, how much business there would be,
9 how we would go about selling them, all of
10 those kinds of things.
11 Q Were you involved in any actual
12 agreements that Citibank entered into?
13 A Yes.
14 Q And when did those start?
15 A My recollection again is early
16 '90s.
17 Q And what role did you play in
18 connection with those reserve fund
19 agreements that Citibank entered into?
20 A What I have already described.
21 Q Would you have been responding
22 to bids?
23 A At that point, my recollection
24 is they weren't being bid, that we could
25 still get them on an exclusive basis.

Page 71

1 Peter Shapiro
2 Q So there would be exclusive
3 discussions on counterparty to dealer to
4 try to put them in place?
5 A Yes, or, often, it wasn't
6 counterparty to dealer as much as a
7 counterparty to intermediary, like a banker
8 from another firm, a financial advisor, and
9 the like.
10 Q And were you personally
11 involved in those discussions with either
12 the counterparty or its intermediary
13 regarding reserve fund agreements at
14 Citibank?
15 A As part of a team at Citibank.
16 Q And so you recall actually
17 being involved with the execution of
18 reserve fund agreements at Citibank?
19 A Again, reserve fund agreements,
20 I would correct you just to use that
21 generic category of "forward purchase
22 agreements," yes.
23 Q Yes. My question was actually
24 very specific about reserve fund
25 agreements.

Page 72

1 Peter Shapiro
2 Do you recall being involved
3 with any reserve fund agreements?
4 A We didn't call them "reserve
5 fund agreements" at that time. They could
6 be used for a variety of purposes. I'm not
7 recalling whether or not there was a
8 specific -- there were specific ones that
9 were for reserve funds or float funds or
10 other funds.
11 Q But you do recall being
12 involved with forward purchase agreements?
13 A Yes.
14 Q And which counterparties do you
15 recall being involved with?
16 A I'm not remembering specific
17 names. We are going back more than
18 20 years.
19 Q How many forward purchase
20 agreements were you involved with at
21 Citibank?
22 A My recollection is it
23 wouldn't -- it wouldn't have been a big
24 number, fewer than ten.
25 Q And then when did you leave

Page 73

1 Peter Shapiro
2 Citibank?
3 A I left in 1993.
4 Q Why did you leave Citibank?
5 A How long do you have?
6 Q All day.
7 A Working at Citibank had -- it
8 had good parts and bad parts. By 1993 the
9 bad parts had come to outweigh the good
10 parts. And I had another opportunity and
11 thought it would be better to work in a
12 different place. I left, you know, my own
13 volition.
14 Q And --
15 A As did by the way, I mentioned,
16 we -- you know, I basically worked as a
17 partner with the head of the municipal bond
18 area. We both left together.
19 Q And where did you go?
20 A I went to Euro Brokers.
21 Q With the colleague you just
22 mentioned?
23 A No, he went off to work on
24 another project.
25 Q And what was your role at Euro

Page 74

1 Peter Shapiro
2 Brokers?
3 A I was a senior vice president
4 at Euro Brokers. I was responsible for
5 supervising their municipal financial
6 products desk and for developing other
7 lines of business.
8 Q And how long did you stay at
9 Euro Brokers?
10 A Until 1997.
11 Q And what did you do at that
12 point?
13 A I set up Swap Financial Group.
14 Q Why did you leave Euro Brokers?
15 A Management had changed at Euro
16 Brokers. The -- and I thought it would be
17 better to start up my own firm. I didn't
18 like the direction management was taking.
19 I also thought that there was a big
20 opportunity if I set up my own firm.
21 Q And you have been at Swap
22 Financial Group since then?
23 A Correct.
24 Q Do you have any certifications
25 or licenses?

Page 75

1 Peter Shapiro
2 A At Swap Financial Group, as I
3 think I testified previously, we fell into
4 an unregulated area until the Dodd-Frank
5 Act occurred. As an unregulated financial
6 entity, there were no licensing
7 requirements.
8 And moreover, more important,
9 any prior licenses you had would lapse
10 because you were no longer part of a
11 registered or licensed entity. So the
12 various NASD licenses or certifications
13 that someone has in the securities industry
14 lapse after two years if you're not being
15 with a registered firm.
16 So I had previously, you know,
17 various registrations, what are known as
18 series followed by a number. But those all
19 lapsed.
20 Q So at some point you did have a
21 Series Seven or something like that?
22 A I had 52, 53, and 63. I think.
23 Q And when did you have those?
24 A I think I had 52 and 53 from my
25 Citi days. I think I added 63 at Euro

Page 76

1 Peter Shapiro
2 Brokers.
3 Q And then after -- two years
4 after you left Euro Brokers, those licenses
5 lapsed?
6 A Yes.
7 Q Any other certifications or
8 licenses that you've held?
9 A Of what type.
10 Q Of a professional nature, like
11 a Series 52 or some other license that you
12 may have?
13 A Not that I -- not that I --
14 Q Financial planner license?
15 There are all sorts of different licenses.
16 A There are -- there are lots of
17 designations like financial planner that
18 you are given by, you know, organizations
19 that you can, you know, get a stamp. But I
20 didn't go after any of those.
21 Q Are you a member of any
22 professional organizations?
23 A A variety. I am trying to
24 think of all of the ones I think you have
25 my -- my full CV, and that would probably

Page 77

1 Peter Shapiro
2 represent that accurately. That should
3 represent that accurately.
4 Q The CV that's located on your
5 Swap Financial web site?
6 A Yeah, and anything else that
7 has been supplied to you.
8 Q Do you recall, sitting here,
9 what professional organizations you are a
10 member of?
11 A You know, I am thinking of a
12 few of them. But the NCSHA, National
13 Council of State Housing Agencies --
14 (There was a discussion off the
15 record.)
16 A National Council of State
17 Housing Agencies. What other ones? You
18 know, we are registered with the MSRB, with
19 the SEC, but those aren't -- you know, you
20 know, I have -- I'd have to go back and
21 look.
22 If you have a copy, I can go --
23 I can refer to that rather than trying to
24 do it from memory.
25 Q Okay. What publications or

Page 78

1 Peter Shapiro
2 what articles or books have you published?
3 A As mentioned in Exhibit --
4 Q -- 10?
5 A 10, yes. I did a chapter for
6 the Feldstein and Fabozzi book in 2008.
7 You know, I have -- I'm not somebody that
8 contributes articles as a part of my
9 profession.
10 I am quoted very frequently in
11 the press as any Google search would show.
12 And, you know, I am quoted very often by
13 Bloomberg, the Wall Street Journal, the
14 Bond Buyer, you know, often by the
15 mainstream press, you know, New York Times,
16 various publications around the country.
17 I have been on CNBC, Bloomberg
18 TV, things like that.
19 Q Other than this article, have
20 you published any other articles or books?
21 A I'm not -- part of my business
22 is not publishing. I'm not an academic or
23 a commentator.
24 Q So you haven't published any
25 other articles?

Page 79

1 Peter Shapiro
2 A Not that I -- not that I can --
3 you know what? That's not correct. I know
4 a talk I gave was converted into an article
5 by the National Association of College and
6 University Business Officers, which is the
7 organization that -- that represents
8 financing by higher education entities in
9 this country, NACUBO, as that's called.
10 I know they converted something
11 into an article there.
12 Q When was that?
13 A Within the last two or
14 three years.
15 Q Do you have a copy of that
16 article?
17 A I could dig one up.
18 Q And was your article or your
19 chapter, "Good Swap, Bad Swap," was that a
20 peer-reviewed process to get placed in that
21 book?
22 A No, this is -- this is
23 published by -- if you know Frank Fabozzi,
24 he's a very, you know, well-respected
25 writer and compiler, you know, editor of

Page 80

1 Peter Shapiro
2 financial books.
3 And he asked me -- he and his
4 colleague, Sylvan Feldstein, who is a very
5 well-respected commentator and analyst in
6 the municipal, asked me to do the chapter.
7 Q But it wasn't a peer-reviewed
8 chapter that was --
9 A It's not a -- peer review, I
10 think, only applies in academia. This is
11 not -- this is not an academic book. This
12 is much more of a practitioner's book.
13 Q So it didn't go through any
14 peer-review process that you're aware of?
15 A I have never heard of peer
16 review out -- applied to anything outside
17 of academia; have you?
18 Q I am just -- I am just trying
19 to understand if this was an article that
20 went through a peer review process or not,
21 so just trying to confirm.
22 A Peer review only applies in
23 academia as far as I know.
24 Q So you don't think this was
25 peer reviewed?

Page 81

1 Peter Shapiro
2 A Unless by "peer reviewed" you
3 would consider, you know, Feldstein and
4 Fabozzi to be peers who read it and decided
5 whether or not it was suitable. It's not
6 -- not by -- the term "peer review," as I
7 think you are using it, is what applies in
8 academia.
9 MS. SAWYER: I can keep going,
10 but it's a good time for a break if
11 anybody needs to stretch their legs.
12 (A break is taken.)
13 (Exhibit No. Lehman 15,
14 April 25, 2009 memorandum from Swap
15 Financial Group, previously marked
16 Document, is introduced into the
17 proceedings.)
18 (Exhibit No. Lehman 19,
19 September 10, 2009 Memorandum from
20 Swap Financial Group, previously
21 marked Document, is introduced into
22 the proceedings.)
23 Q Before you are two exhibits
24 that have been previously marked as Lehman
25 Exhibit 15, Lehman Exhibit 19, right here.

Page 82	Page 84
<p>1 Peter Shapiro</p> <p>2 A Okay.</p> <p>3 Q Which are memoranda from Swap</p> <p>4 Financial Group dated April 21, 2009, and</p> <p>5 September 10, 2009, respectively.</p> <p>6 Looking first at Lehman</p> <p>7 Exhibit 15, which is the April 25, 2009</p> <p>8 memorandum --</p> <p>9 A Yes.</p> <p>10 Q -- when you were deposed in</p> <p>11 December, you did not recall precisely how</p> <p>12 this memorandum was prepared. Did you do</p> <p>13 anything in preparation for this deposition</p> <p>14 to refresh your recollection as to how this</p> <p>15 memorandum was prepared?</p> <p>16 A I read over the deposition as I</p> <p>17 said.</p> <p>18 Q You didn't do anything, didn't</p> <p>19 look at any other documents or look back</p> <p>20 your E-Mails or anything to try to get an</p> <p>21 understanding as to how this document was</p> <p>22 prepared?</p> <p>23 A No.</p> <p>24 Q And then, if you look at the</p> <p>25 September 10, 2009 memorandum, Lehman</p>	<p>1 Peter Shapiro</p> <p>2 plus the spread analysis; is that fair?</p> <p>3 A Right.</p> <p>4 Q If you look at the credit</p> <p>5 spread that you --</p> <p>6 A I would say, if I can, LIBOR</p> <p>7 plus or minus spread, just so we are being</p> <p>8 fully accurate. When we say "LIBOR plus</p> <p>9 spread," we would -- it's probably better</p> <p>10 to say "LIBOR including spread," because it</p> <p>11 can go either way.</p> <p>12 Q In fact, your spread is a</p> <p>13 negative spread?</p> <p>14 A That's why I'm -- I corrected</p> <p>15 you there, yes.</p> <p>16 Q All right. If you look at the</p> <p>17 third page of the September 10, 2009</p> <p>18 memorandum, it has a credit spread of</p> <p>19 negative 429 basis points, correct?</p> <p>20 A Correct.</p> <p>21 Q How many times prior to the</p> <p>22 preparation of this memorandum had you</p> <p>23 calculated a credit charge for a forward</p> <p>24 purchase agreement?</p> <p>25 A Can I ask you to clarify the</p>
Page 83	Page 85
<p>1 Peter Shapiro</p> <p>2 Exhibit 19, this is essentially an</p> <p>3 identical memorandum to the April 21st,</p> <p>4 memorandum except for it's only for a</p> <p>5 single valuation date, correct?</p> <p>6 A I know it's for a different</p> <p>7 valuation date. That's right.</p> <p>8 Q If you look at Lehman</p> <p>9 Exhibit 15, it has valuation dates of</p> <p>10 October 2, 2008, and March 25, 2009.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q If you look at Lehman</p> <p>14 Exhibit 19, it just has a valuation date of</p> <p>15 March 25th, 2009.</p> <p>16 Do you see that?</p> <p>17 A Correct.</p> <p>18 Q And in Lehman Exhibit 19 you</p> <p>19 reach the conclusion that the "Loss,"</p> <p>20 capital L -- "Loss valuation should be</p> <p>21 \$46,437,610."</p> <p>22 Correct?</p> <p>23 A Correct.</p> <p>24 Q And to reach that valuation you</p> <p>25 used essentially a LIBOR plus spread --</p>	<p>1 Peter Shapiro</p> <p>2 question? Do you mean in conjunction with</p> <p>3 a termination or with an original purchase,</p> <p>4 or with a hypothetical, or --</p> <p>5 Q We can break it into three</p> <p>6 separate questions.</p> <p>7 How many times prior to</p> <p>8 September 10, 2009, had you calculated a</p> <p>9 credit charge for forward purchase</p> <p>10 agreement for purposes of pricing it?</p> <p>11 A For purposes of an initial</p> <p>12 pricing?</p> <p>13 Q Initial pricing.</p> <p>14 A I would say we would have done</p> <p>15 that, you know, somewhere in the 10 to 20</p> <p>16 times.</p> <p>17 Q And when you say "we," who are</p> <p>18 you referring to?</p> <p>19 A The firm.</p> <p>20 Q Swap Financial Group?</p> <p>21 A Yes, yeah, and, you know, I</p> <p>22 would be involved as the boss to see what</p> <p>23 the work consisted of.</p> <p>24 Q And that would have been</p> <p>25 services you provided for a municipal</p>

Page 86

1 Peter Shapiro
2 client in connection with the origination
3 of one of their reserve fund agreements or
4 forward --
5 A Forward purchase agreement,
6 yes.
7 Q And how many times did you come
8 up with a credit charge for an initial --
9 initial pricing of a reserve fund
10 agreement?
11 A I can't recall how many of
12 those were reserve fund agreements, but we
13 would always have a credit charge in --
14 built in there. The bank always built a
15 credit charge.
16 And we would have to make an
17 estimate of what the bank should charge,
18 what was fair, all of that sort of thing.
19 Q And how in those ten instances
20 that Swap Financial Group calculated those
21 initial -- initial pricing credit charges,
22 how did you go about doing that?
23 A The key thing to do would be
24 based upon:
25 What is market practice? That

Page 87

1 Peter Shapiro
2 is, what were other banks charging at the
3 time? You know, what would be considered
4 to be fair under the circumstances?
5 Our job on an initial pricing
6 is to try to push that credit spread down,
7 of course, because we want to get a better
8 deal for our client, and to try to say, you
9 know, "you are charging too much." But we
10 always know -- knew, of course, there would
11 be a charge there.
12 Q So your involvement with the
13 credit charge in these situation on behalf
14 of your client was to essentially try to
15 negotiate those credit charges down?
16 A If we were originating, yes.
17 Q Yes.
18 In connection with the
19 termination of a forward purchase
20 agreement, how many times have you
21 calculated credit charges in connection
22 with that situation?
23 A During what period of time?
24 Q Since 2008.
25 (There was a discussion off the

Page 88

1 Peter Shapiro
2 record.)
3 A Since 2008?
4 Q I'm sorry. I'm sorry. Prior
5 to 2009.
6 A Prior --
7 Q 2009, September of 2009.
8 A Prior to 2009, how many times
9 in connection with the termination?
10 Q Um-hum?
11 A An actual termination or a --
12 a -- you know, again, we do a lot of
13 scenario analysis. What if, if somebody
14 were to terminate?
15 Q Let's talk about an actual
16 termination first.
17 A In conjunction with actual
18 terminations, my guess -- my guess would be
19 about five.
20 Q Okay. And how would you go
21 about determining a credit charge in that
22 situation where there was an actual
23 termination of a contract?
24 A You would have to look at what
25 credit circumstances were like at the time

Page 89

1 Peter Shapiro
2 of the termination.
3 Q And what would you look at to
4 determine the credit circumstances?
5 A Ideally, you'd look at live
6 trades that occurred at the same time.
7 Q You'd look for comparables in
8 the market?
9 A Correct. And I say that,
10 ideally, in the absence, you have to do --
11 of a live trade, you have to do something
12 else.
13 Q And prior to 2009 in a
14 termination scenario, were there
15 circumstances where you were not able to
16 look at other comparable live trades to
17 determine the credit charge?
18 A I can think of one.
19 Q And what was that circumstance?
20 A This had to do with a
21 termination that occurred in 2007.
22 Q And how did you go about
23 calculating that credit charge?
24 A This was a case where we were
25 involved after the fact, and, you know, we

Page 90

1 Peter Shapiro
2 were brought in to assist a customer in
3 a -- you know, in a confidential mediation,
4 with another non-Lehman financial
5 institution, where our client had -- had
6 terminated voluntarily. And we had to
7 estimate the credit charge in that case.
8 Q And how did you go about
9 estimating the credit charge?
10 A The issue was that -- just like
11 in this -- in this contract, the burdened
12 party was the one responsible for doing
13 that initially, of course.
14 The burdened party in that
15 case, because our client had volitionally
16 terminated, was the bank. The bank was
17 supposed to determine that via market
18 quotation, and the bank failed --
19 (There was a discussion off the
20 record.)
21 A -- do that, to do the
22 determination via market quotation, and
23 they failed to do that.
24 So then we had to get into a
25 mediation to look at what credit charges

Page 91

1 Peter Shapiro
2 would have been at that time.
3 Q And, specifically, how did Swap
4 Financial Group go about calculating the
5 credit charge in that circumstance?
6 A Dealer survey.
7 Q And you called how many, about
8 how many dealers?
9 A I wasn't -- I wasn't the one
10 who did it, so I wouldn't know.
11 Q But you don't recall anything
12 being done at Swap Financial Group to
13 actually calculate a credit charge?
14 A I just said, yes, we did that
15 by doing the other survey.
16 Q There wasn't a CVA analysis or
17 Monte Carlo analysis or anything done by
18 Swap Financial Group itself?
19 A No, because this was a
20 termination that had occurred in 2007 when
21 it was a live market.
22 Q Okay.
23 A So you had a -- you had, you
24 know, a market that was going on at the
25 time of termination. You didn't have a

Page 92

1 Peter Shapiro
2 you, you know, a nonexistent market like we
3 face in this case.
4 Q But in this case, you also did
5 a dealer survey as to credit charges,
6 correct?
7 A In this case, we knew that
8 there wasn't a live market. You know,
9 there was -- there is no dispute about
10 that. So, you know, you are trying to get
11 a sense of where a dealer should charge, so
12 we didn't -- you know, there is nothing we
13 could -- we could really use there.
14 Nobody could really say, "If I
15 were doing something I'm not doing, here is
16 what I would charge."
17 Q And did you ask dealers that?
18 A Throughout this period of time,
19 we had multiple cases going on. So I am
20 certain we had conversations with dealers
21 about -- about this market. But it's
22 almost pointless, Lauri, to say:
23 "What would you have charged if
24 you could have charged on something you say
25 you cannot do?"

Page 93

1 Peter Shapiro
2 Q My question is simply:
3 Do you recall having
4 conversations with dealers about what an
5 appropriate credit charge would be for the
6 Washington RFA?
7 A Not -- on -- specifically on
8 this case, I'm not recalling. In prior
9 testimony, did we cover this?
10 Q I think that you covered that
11 you had contacted dealers.
12 A We did contact dealers, and we
13 were turned down. If you want to go back
14 to my deposition or anything else that --
15 Q This is not -- this is not an
16 area that was covered in your prior
17 deposition about whether or not you
18 solicited and asked for information about
19 credit charges from dealers.
20 A And you are asking specifically
21 for Washington, yeah. And, you know, my --
22 to the best of my recollection, you know,
23 our conversation with dealers specifically
24 around Washington was, "We can't do this."
25 Q In the fall of 2009 at the time

Page 94

1 Peter Shapiro
2 that this memorandum was drafted, did you
3 survey dealers about what typical credit
4 charges would be in the market at this
5 time?
6 A You mean typical and not
7 pertaining to Washington.
8 Q Right, like you said, you did
9 in this other instance. You surveyed the
10 market to see what the charges would be.
11 Did you survey the market in September of
12 2009?
13 A In September 2009, we knew we
14 had a dead market. Now, you know, we are
15 in continual touch with dealers as a firm
16 on all sorts of issues trying to find out
17 what they can do, what they can't do, if
18 they could do it, where are they on
19 pricing, and stuff like that.
20 But you know, if somebody says,
21 "I can't do this at any price," any
22 additional information you're going to
23 glean from them is probably not of much
24 value.
25 Q So did you survey the dealers

Page 95

1 Peter Shapiro
2 in September of 2009 about --
3 A Washington, no --
4 Q -- about typical credit charges
5 at that time?
6 (There was a discussion off the
7 record.)
8 Q -- about typical credit charges
9 at that time?
10 A As I said, we are in constant
11 touch with dealers. We are talking to
12 major dealers virtually everyday. There
13 was no formal survey, per se.
14 Q Do you recall receiving
15 information from dealers in September of
16 2009 about typical credit charges?
17 A I recall them saying that they
18 wouldn't do these deals, and that was out
19 of primarily a credit concern.
20 Q Do you recall discussing with
21 them what a credit charge might be in
22 September of 2009?
23 A On a deal they could not do?
24 Q I am just asking if you recall
25 having those conversations.

Page 96

1 Peter Shapiro
2 A Not about what they would
3 charge for something they could not do.
4 That would be meaningless.
5 Q So you didn't have those
6 conversations?
7 A No.
8 (Exhibit No. Shapiro 25, Copy
9 of the expert information provided to
10 Jones Day on December 16, 2013, a copy
11 of Mr. Shapiro's September 10, 2009,
12 memorandum with an additional cover
13 sheet, is marked by the reporter for
14 identification.)
15 Q The court reporter has handed
16 you a document that has been marked as
17 Shapiro Exhibit 25, which is a copy of the
18 expert information that was provided to us
19 on December 16, 2013. It appears to be a
20 copy of your September 10, 2009, memorandum
21 that we were just looking at, with an
22 additional cover sheet.
23 Do you see that?
24 A Correct.
25 Q And in your cover sheet which

Page 97

1 Peter Shapiro
2 you signed, you indicated that you needed
3 to correct the September 10, 2009,
4 valuation memo, right?
5 A Correct.
6 Q And you needed to correct it to
7 correlate it to the scheduled maturity of
8 the reserve fund agreement of 2032, right?
9 A Correct.
10 Q When did you learn that the
11 scheduled maturity of the reserve fund
12 agreement was 2032?
13 A Subsequent to our original
14 opinion on this.
15 Q Subsequent to September 10,
16 2009?
17 A Yes.
18 Q When between September 10,
19 2009, and December 13, 2013, did you learn
20 that it had been, that the scheduled
21 maturity was 2032?
22 A I can't recall the exact date,
23 but, you know, as you know, we had
24 originally been furnished with a document
25 that was originally furnished by Lehman

<p style="text-align: right;">Page 98</p> <p>1 Peter Shapiro</p> <p>2 that had said 2042. And then it was</p> <p>3 subsequently amended.</p> <p>4 The one that we originally</p> <p>5 received was the unamended version, which</p> <p>6 is what our valuation was based on. Then,</p> <p>7 subsequently, it was discovered that it</p> <p>8 had, in fact, been amended to 2032.</p> <p>9 Q Do you remember the context in</p> <p>10 which you learned that it had been amended</p> <p>11 to 2032?</p> <p>12 A My recollection is it was</p> <p>13 during the phone call with the agency.</p> <p>14 Q That someone from the agency</p> <p>15 advised you of the amendment to 2032?</p> <p>16 A Yeah, I think there were people</p> <p>17 from the authority on the phone as well as</p> <p>18 counsel.</p> <p>19 Q And do you recall whether that</p> <p>20 happened before or after the mediation of</p> <p>21 this matter?</p> <p>22 A It was before the mediation.</p> <p>23 Q And do you recall any</p> <p>24 discussion about why the management wasn't</p> <p>25 included in your September 10, 2009,</p>	<p style="text-align: right;">Page 100</p> <p>1 Peter Shapiro</p> <p>2 obviously not relevant; and the contract,</p> <p>3 in fact, did not extend that long.</p> <p>4 Q Did you -- did you do that</p> <p>5 calculation?</p> <p>6 A No.</p> <p>7 Q Someone at your firm?</p> <p>8 A Right.</p> <p>9 Q And did they -- is it -- was it</p> <p>10 done in a spreadsheet or with a calculator?</p> <p>11 A It would have been done with</p> <p>12 a -- most likely with a spreadsheet or on a</p> <p>13 Bloomberg screen or in one -- in one of our</p> <p>14 models.</p> <p>15 Q Okay.</p> <p>16 A You know, I'm not the one who</p> <p>17 did that, but those are the three ways that</p> <p>18 it gets done.</p> <p>19 Q And -- but you don't know which</p> <p>20 way it was done?</p> <p>21 A I don't know, no.</p> <p>22 Q Do you know whether any</p> <p>23 documents were created like an Excel</p> <p>24 spreadsheet showing how it was done?</p> <p>25 A I don't know.</p>
<p style="text-align: right;">Page 99</p> <p>1 Peter Shapiro</p> <p>2 memorandum?</p> <p>3 A It hadn't been furnished to us.</p> <p>4 Q And furnished to you by Lehman?</p> <p>5 A No, no, by the Authority.</p> <p>6 Q When did the Authority give you</p> <p>7 a copy of the amendment?</p> <p>8 A Around the time of that phone</p> <p>9 conversation.</p> <p>10 Q But you at some point did see</p> <p>11 that --</p> <p>12 A Yes.</p> <p>13 Q -- amendment?</p> <p>14 A Oh, yes.</p> <p>15 Q And how did you -- in your last</p> <p>16 deposition, you testified that you</p> <p>17 calculated this new number, this</p> <p>18 \$38,007,347 by knocking off the last ten</p> <p>19 years?</p> <p>20 A Correct.</p> <p>21 Q Explain to me what you mean by</p> <p>22 "knocking off the last ten years."</p> <p>23 A You have to make the assumption</p> <p>24 that instead it went to 2032, that the date</p> <p>25 that we included between 2032 and 2042 was</p>	<p style="text-align: right;">Page 101</p> <p>1 Peter Shapiro</p> <p>2 MS. SAWYER: To the extent</p> <p>3 there is such a spreadsheet reflecting</p> <p>4 its calculation --</p> <p>5 MR. LAWRENCE: I think we would</p> <p>6 have provided it if there is one, but</p> <p>7 we can confirm.</p> <p>8 THE WITNESS: That is correct.</p> <p>9 That is correct.</p> <p>10 Q So if there was a spreadsheet</p> <p>11 or a model, literally, there would be a</p> <p>12 list of delivery dates and numbers</p> <p>13 corresponding to delivery dates, correct?</p> <p>14 A There would be -- there would</p> <p>15 be each of the dates that would go out</p> <p>16 until 2032, and a present value calculation</p> <p>17 that would go backward if it were in a</p> <p>18 spreadsheet.</p> <p>19 If it were in a model, it might</p> <p>20 just show start date, end date, because,</p> <p>21 you know, the model will not necessarily</p> <p>22 display a spreadsheet. It will just -- it</p> <p>23 will have it behind it in some manner if</p> <p>24 you have ever worked with these models.</p> <p>25 Q Other than changing the</p>

Page 102

1 Peter Shapiro
2 maturity date from 2042 to 2032, did you
3 change any other assumptions in reaching
4 this revised calculation?
5 A Not that I can recall. You
6 know, the model would normally build in,
7 you know, a series of curves. And those
8 curves would take into account interest
9 rates at different points so that the
10 interest rate at 2032 could very well be
11 different from the interest rate at 2042,
12 depending upon the steepness of the curve
13 at the latter part of the maturity
14 spectrum.
15 In most yield curve
16 environments, it's relatively flat on the
17 long end from 2032 to 2042 in the current
18 example.
19 So they may -- that may not
20 have changed. It may have changed. But it
21 would have been embedded in the model.
22 Q But that would have been
23 embedded in the model, correct?
24 A Correct.
25 Q But if you had done the

Page 103

1 Peter Shapiro
2 calculation by using a spreadsheet and just
3 removing the last ten years, that -- that
4 assumption might not be included?
5 A It should be in there as well.
6 Q And how would that be included
7 in the spreadsheet?
8 A The spreadsheet shouldn't use a
9 just simple flat interest rate. It should
10 use, you know, a curve.
11 Q So the spreadsheet, if it was
12 done in that method, should be somehow
13 tied -- tied to the yield curve?
14 A Correct.
15 Q Did you adjust the credit
16 charge in -- at the same time that you
17 reduced the maturity date?
18 A No.
19 Q Did you adjust the profit
20 charge?
21 A No.
22 (Exhibit No. Shapiro 26, Excel
23 spreadsheet Bates stamped SFG 2009, is
24 marked by the reporter for
25 identification.)

Page 104

1 Peter Shapiro
2 Q The court reporter is handing
3 you a document that has been marked as
4 Shapiro Exhibit 26, which, for the record,
5 is an Excel spreadsheet Bates stamped
6 SFG 2009.
7 Have you seen this document
8 before? Have you seen this spreadsheet
9 before?
10 A I can't recall.
11 Q It was produced by counsel --
12 from the Swap Financial privilege log,
13 indicated it was created on April 27, 2010.
14 Does that refresh your
15 recollection as to this document?
16 A April 27, 2010, it doesn't
17 really. No.
18 Q Do you -- do you know who would
19 have prepared this document in 2010?
20 A It would be either James
21 Vergara -- James Vergara, V-e-r-g-a-r-a, or
22 Lillian Chern, C-h-e-r-n.
23 Q And do you know why they would
24 have been preparing this spreadsheet in
25 2010?

Page 105

1 Peter Shapiro
2 A It's showing, you know, values
3 for -- you know, for a -- for the agreement
4 going out to 2042, so it's -- you know, it
5 looks like it's showing how the
6 calculations could be made.
7 Q And it -- the total at the
8 bottom of \$46,437,610, that's the same
9 number as found in your September 10, 2009,
10 memo?
11 A Correct.
12 Q Do you have any -- can you
13 explain to me what is reflected on this
14 spreadsheet?
15 A I am looking at -- as I look at
16 it, what it is showing is a column D --
17 column B shows semi-annual dates. Column D
18 shows a stream of fixed payments. And
19 column F shows the discounted value of
20 those payments reflecting a present value
21 rate.
22 Q So column F is just a
23 discounted value of the fixed leg payments?
24 A Correct.
25 Q And what discount rate is used

Page 106

1 Peter Shapiro
2 if you know?
3 A I can't tell by eyeballing it.
4 I am looking at -- at what's shown here,
5 and there is -- if you look at row four, it
6 says PV rate, 2.413.
7 Now, Lauri, if we do a quick
8 seat-of-the-pants PV calculation, you will
9 notice the -- you know, the drop as of --
10 as of 12/1/09 goes from 1,020,875 to
11 1,004,275. That's a differential of
12 \$16,000, plus, on a -- you know, on the
13 12/1/09 date. And the calculation appears
14 to begin in March of '09, less than a full
15 year.
16 So, you know, just using rough
17 and easy math, the \$16,000 differential on
18 roughly a million dollars would be a
19 1.6 percent rate for a partial year. So it
20 looks like it corresponds with about that
21 2.413 PV rate.
22 Q So that PV rate in column C4 of
23 2.413 could be the discount rate reflected
24 in this?
25 A It appears to be what's

Page 107

1 Peter Shapiro
2 reflected in this.
3 Q And why -- why would this
4 analysis be done? Why would you discount
5 the fixed -- you know, the fixed payment of
6 the RFA by that discount rate?
7 A Well, as you can see, if you
8 summed the gross values, in -- in column D
9 you get to a \$67 million amount that Lehman
10 would owe.
11 That's not right because that's
12 including the future value of those
13 dollars, what they would be at those
14 points. For it to make a claim based upon
15 today's value, you have to discount back to
16 present value dollars. And that produces a
17 lower cost for Lehman.
18 Q And is that 2.413, is that the
19 discount rate that was used in the
20 September 10, 2009 memo?
21 A It's the one that is used in
22 this and arrives at the same number.
23 It's -- normally, the model is not going to
24 discount at a single rate. It's going to
25 discount at a curve. But you could also

Page 108

1 Peter Shapiro
2 solve for the same average rate that will
3 produce the same dollar number.
4 Q But this spreadsheet doesn't
5 contain any information about a floating
6 leg like you describe in your September 10,
7 2009 memo, right?
8 A Right. As I described in my
9 deposition at length, normally, if you are
10 looking at the difference between two fixed
11 rates, you know, that's what you are
12 basically solving for.
13 That is:
14 What is the fixed rate that
15 Lehman contracted to provide Washington?
16 What is the fixed rate that Washington,
17 after Lehman defaulted on its agreement?
18 What is the -- what is the fixed rate that
19 Washington could then replace at?
20 So it's a comparison, really,
21 if you think about it, between two fixed
22 rates. That's the right way to think about
23 the loss.
24 Q So in your expert opinion, what
25 is the fixed rate that Washington could

Page 109

1 Peter Shapiro
2 replace at?
3 A The -- what we calculated out
4 was at a fixed rate that was lower by the
5 amount which is shown in the exhibits that
6 we have gone over, you know, having reduced
7 what Washington would have received by a
8 total as shown on page three of Exhibit 19,
9 reducing it by 300, 3.874 percent, much
10 lower.
11 Q So reducing the 4.484 less than
12 3.874?
13 A Correct.
14 Q Not -- not that that's a spread
15 to LIBOR?
16 A That's not a spread to LIBOR
17 because if you do it -- if you did it as a
18 spread to LIBOR, you get a nonsense result
19 with almost any spread.
20 Q So --
21 A You know, just simply because
22 LIBOR got so low -- you don't normally
23 spread this to the floating rate. You
24 spread it -- you look at it as the spread
25 in the agreement which in this case the

Page 110

1 Peter Shapiro
2 applicable thing to look at is reducing the
3 fixed rate.
4 Q So your expert opinion is that
5 the replacement rate that Washington could
6 have experienced was 61 basis points?
7 A Correct.
8 Q And --
9 A If -- that's 61 basis points if
10 your math is right, Lauri, and I am
11 trusting that you did your math well.
12 Q And so what does this
13 spreadsheet that we are just looking at,
14 Shapiro 26? What does that have to do with
15 that 61 basis points?
16 A We could look and do the math
17 quickly right here. Take 61 basis points
18 and multiply times 45.59. You want -- you
19 want to do it right now?
20 Q Sure, I am just not -- I'm not
21 sure how that is reflected in this
22 spreadsheet.
23 A Let's do it and see if we can
24 get to the same numbers.
25 Q Okay.

Page 111

1 Peter Shapiro
2 A Okay. Do you have a
3 calculator, or do you want me to use one?
4 Q You can do it. We can check.
5 Maybe that you can check while you're doing
6 it. I don't -- I didn't bring a calculator
7 with me today.
8 A Most cell phones have them in
9 them.
10 Q I didn't bring my cell phone.
11 A Oh, my God.
12 Q I'm focused.
13 A Okay.
14 (There was a discussion off the
15 record.)
16 A So let's look -- 45 -- and I am
17 just going to round here for sake of speed,
18 44.5 million as our principal amount.
19 Okay. And what was the --
20 Q 45.5 is the principal amount.
21 A Right. And we -- you
22 calculated 61 basis points.
23 Okay. So I am going to
24 multiply that, okay, times .0061, right.
25 Q No. 61 basis points, so 0.61?

Page 112

1 Peter Shapiro
2 A No, 0.61 would be 61 percent.
3 Q Okay. Then --
4 A 0.0061 is 61 basis points.
5 Q Maybe I am lost. If you take
6 4.484 and minus 3.874, you come up with
7 0.61?
8 A 0.61 percent. But if you want
9 to express it as a decimal, you have to put
10 it 0.00061, because 0.1 is 10 percent, of
11 course.
12 Q Okay. Sure.
13 A Okay. And that gives me a
14 number of 2 million -- I mean, of -- that
15 gives me a number of 277,550. Okay. Now,
16 why are we -- so we are not -- we are
17 getting a different number here.
18 That would be the annual number
19 we would get if it were being done at 67.
20 So this is -- 61 basis points. So this
21 number is probably more the differential.
22 Q Which -- which number did you
23 just point to to say it's "probably more
24 the differential"?
25 A The number -- the number in

Page 113

1 Peter Shapiro
2 column D, which is what you wanted to solve
3 for, which is the 1,020,875 number.
4 Q The -- it's -- that 1 million
5 number is the differential of what?
6 A Between the two fixed rates
7 that we are looking at. It's not the
8 absolute level. So based upon my
9 assumption -- let's run it again, and we
10 will see if I am right.
11 Q Let's hold on one second. I
12 thought you told me column D was the amount
13 that Washington TSA would expect to earn
14 under 4.484 percent. And then column F was
15 that expected amount discounted?
16 A No.
17 Q No?
18 A I think that's what you were
19 saying. The column D represents the loss
20 per year.
21 Q Okay.
22 A Okay. So in other words,
23 the -- that should be what is, so let's --
24 let's run it that way.
25 Okay. What -- remember, what

Page 114

1 Peter Shapiro
2 did we say the loss number was, the loss
3 amount in basis points?
4 Let's look at -- look at --
5 look at our document on page three. And
6 what it shows the loss was -- how many
7 basis points -- 387, right?
8 Q I am just listening to what you
9 are telling me.
10 A I want to make sure you are
11 getting this, though, okay.
12 So let's take 45.5, okay, and
13 got it typed wrong. 45.5, and let's see if
14 this gets to us that number. And what's
15 sour differential there -- is 0.0387? Is
16 that correct?
17 Q 0.03874.
18 A We are rounding anyhow, so we
19 are just trying to make sure we are close.
20 Okay. And that will produce a number of --
21 I am getting a number of there 1.76 million
22 per year. Remember, these are semiannual
23 payments.
24 So it's not -- this is not
25 solving to exactly that number. You know,

Page 115

1 Peter Shapiro
2 this is -- let's -- let's solve it
3 backwards just to see where the number
4 would have come from.
5 Okay. We have got 102 --
6 1020875 semiannually here. Okay. 1020 --
7 okay. So, annually, it's times two, right,
8 so it's a 2040 number.
9 Okay. And let's divide that,
10 okay, by the principal amount, which is
11 45.5. Okay. And we can see there -- my
12 calculator went backwards on here. Let's
13 do it again the other way.
14 Okay. Let me just -- let me
15 clear that one back. We have two -- we
16 have 2040. Okay. Okay. And I divide that
17 by the principal amount, which is 45 -- I
18 will put in 534. Okay.
19 Okay. And that produces --
20 yeah, here is what -- the number produces
21 it here is -- sound like a familiar
22 number -- 0.0448.
23 Q Okay.
24 A Okay. So that's -- in other
25 words. That's the fixed rate on the deal.

Page 116

1 Peter Shapiro
2 Q Right. That's what -- that's
3 what column D is --
4 A Yeah.
5 Q -- is it's what the fixed rate
6 earnings --
7 A That's correct --
8 Q -- would be for Washington TSA?
9 A That's correct.
10 Q Okay.
11 A Okay. And -- and, you know, so
12 that that -- that is where it's showing
13 with the fixed rate. So this is what --
14 the other column is showing what the loss
15 is, it looks like.
16 Q The loss?
17 A And we're just trying -- we're
18 trying to back-solve what's here.
19 Q And the loss as calculated in
20 Shapiro Exhibit 26 was just determined by
21 discounting that fixed leg, the 4.484 leg?
22 A It appears to be. I can't -- I
23 can't say that for sure. You know, again,
24 as we are sitting here, we are trying to --
25 as the -- as our discussion reveals, we are

Page 117

1 Peter Shapiro
2 trying to go through and figure this out.
3 Q And do you recall being the
4 analysis that was done to reach the loss
5 calculation?
6 A No.
7 Q So this spreadsheet doesn't
8 reflect the analysis that was done?
9 A I don't believe so.
10 Q Do you -- and you don't know
11 why this spreadsheet was created?
12 A I would have to -- I don't
13 really know.
14 Q Do you recall reviewing a
15 spreadsheet in 2010 regarding Washington
16 TSA's loss?
17 A No.
18 Q So going back to Shapiro
19 Exhibit 25, which is the one that has your
20 note on the front of it, what discount rate
21 did you use in your September 10, 2009,
22 memo to present value the future cash
23 flows?
24 A The -- in the 2009, you know,
25 James Vergara would have done the

Page 118

1 Peter Shapiro
2 calculations, not me, so I can't tell -- I
3 can't tell what it was.
4 Q And do you have any records at
5 Swap Financial Group that would reflect
6 what the discount -- the discounting
7 method, whether it was a rate or a curve,
8 to do this?
9 A Anything -- anything that we
10 had, we would have produced. So if you
11 haven't seen it, we didn't preserve it.
12 You know, it may have been the case it was
13 used in a model which was reused again and
14 again.
15 Q Does Swap Financial Group use a
16 standard discounting curve for these
17 valuations it does?
18 A Yes.
19 Q And what is that?
20 A The normal discounting curve
21 that would be used is the LIBOR swap curve.
22 Q Do you have any reason to
23 suspect a different curve was used to
24 discount for the purposes of the valuation
25 done in the Washington RFA?

Page 119

1 Peter Shapiro
2 A No. Just to go back --
3 THE WITNESS: Can you read back
4 the question, Tab, that I answered
5 that Lauri asked right before that:
6 "What curve do we use for
7 discounting?"
8 I just want to make sure that I
9 answered that accurately.
10 (Reporter read back requested
11 question and answer:
12 QUESTION: "Does Swap Financial
13 Group use a standard discounting curve
14 for these valuations it does?"
15 ANSWER: "Yes."
16 QUESTION: "And what is that?")
17 A I would add to that, that, in
18 the last two years, there has been a change
19 in market practice on the discounting curve
20 that's used, but not during the time that
21 we're discussing.
22 Q So at the time we are
23 discussing, it would have been the LIBOR
24 swap --
25 A LIBOR swap curve, since, you

Page 120

1 Peter Shapiro
2 know, in the last couple of years, there
3 has been a major shift in the market
4 towards what is called the OIS curve.
5 It's not relevant to our
6 discussions, but I just wanted to make sure
7 my answer was complete and accurate.
8 Q Have you done an analysis of
9 the Washington TSA valuation using the OIS
10 curve as A discounting curve?
11 A No.
12 Q Has anybody under your
13 direction done that?
14 A No.
15 For the record, the OIS curve
16 would produce a slightly larger loss that
17 Lehman would owe because the OIS curve is a
18 slighter lower discount rate.
19 Q I am handing you a document
20 that has been marked as Shapiro Exhibit 27.
21 And for the record, this is a copy of the
22 Swap Financial privilege log that has been
23 produced to us in this litigation.
24 (Exhibit No. Shapiro 27, Copy
25 of the Swap Financial privilege log,

Page 121

1 Peter Shapiro
2 is marked by the reporter for
3 identification.)
4 Q Have you seen this privilege
5 log before, Mr. Shapiro?
6 A I don't think so.
7 Q Okay. Were you involved in the
8 preparation of the privilege log for this
9 case?
10 A No.
11 Q Did you know that a privilege
12 log had been prepared for this case?
13 A Yes.
14 Q Do you know how that privilege
15 log was prepared for Swap Financial?
16 A How? I know -- I just know
17 lawyers were involved in it.
18 Q And did you address any
19 questions the lawyers had while they were
20 preparing the privilege log?
21 A Many conversations with
22 lawyers. I can't tell whether or not they
23 pertain to their preparation of the
24 privilege log.
25 Q Okay. And when you say the

Page 122

1 Peter Shapiro
2 "lawyers," which lawyers are you referring
3 to?
4 A The lawyers who are working on
5 behalf of Washington TSA.
6 Q Specifically, like Pacifica Law
7 Group?
8 A Yes, I think you know there are
9 two firms that are working on it, those two
10 firms.
11 Q Do you know which firm was
12 responsible for preparing this, the Swap
13 Financial privilege log?
14 A No.
15 Q If you turn to page 22, I
16 double-sided it for conservation purposes.
17 A I give you a "green" award.
18 Q Thank you.
19 The first column lists Bates
20 number, and there is a number there.
21 That's what I am going to refer to.
22 If you look at the second entry
23 there, 132291, do you see that?
24 A Yes.
25 Q It indicates it's an Excel

Page 123

1 Peter Shapiro
2 spreadsheet from June 2010 prepared by Swap
3 Financial Group staff. And it describes a
4 chart illustrating claim amounts for
5 litigation.
6 Do you see that?
7 A Yes.
8 Q Do you recall what this
9 spreadsheet was that was prepared?
10 A Not for the life of me.
11 Q Do you know who would have
12 prepared it from Swap Financial Group's
13 staff?
14 A Without even looking at the
15 document, I couldn't venture a guess.
16 Q And would it have been
17 something you would have reviewed?
18 A Possibly.
19 Q And if you go down to the next
20 page, entry 132317 indicates there is
21 another Excel spreadsheet from October of
22 2009 that said, "Spreadsheet valuations of
23 the RFA."
24 Do you see that?
25 A Yes.

Page 124

1 Peter Shapiro
2 Q And do you know who would have
3 prepared this spreadsheet in October of
4 2009?
5 A The same answer to this
6 exactly. I have no -- you know, no idea.
7 I could venture a guess, Lauri, just
8 because I know James Vergara would have
9 been the person working on it at that
10 point.
11 Q And this would have been
12 prepared just about a month after the
13 September memo that we saw?
14 A Correct.
15 Q Do you know why Swap Financial
16 Group was preparing a spreadsheet shortly
17 after that memorandum was prepared showing
18 the valuations of the RFA?
19 A I could venture a guess, but
20 guessing is not really the right way to
21 approach this.
22 Q What would be your guess? Why
23 would there be a valuation spreadsheet
24 prepared shortly after the memorandum was
25 prepared?

Page 125

1 Peter Shapiro
2 A If there had been further
3 discussions that we had with the Authority,
4 with counsel, internally, you know, you
5 know -- you know, we are constantly curious
6 about our own work, going back and looking
7 at things and speculating on "what if
8 this," "what if that."
9 Q And that was a regular practice
10 done at Swap Financial Group, to consider
11 other alternatives?
12 A Yeah.
13 Q Including after you prepared
14 the memorandum in September of 2009?
15 A Perhaps.
16 Q If you turn to the -- to page
17 44.
18 A 44. Yes.
19 Q If you look at entry 132477,
20 the last one on the page, it's from Lillian
21 Chern to yourself, describing, "Chart for
22 tomorrow, illustrating TSA's claim loss."
23 Do you see that?
24 A Yes.
25 Q Do you recall what that chart

Page 126

1 Peter Shapiro
2 was?
3 A Not from looking at this.
4 Again, just for the record, it's the first
5 time I have looked at this, so --
6 Q Okay. Do you recall a chart
7 being prepared in May of 2012?
8 A Do I recall, a chart of any
9 kind or a chart meaning this description?
10 Q Relating to TSA's claim loss?
11 A You know, I would have to
12 refresh -- when was the mediation?
13 Q It was on May 8, 2012.
14 A And this would correspond with
15 exactly that, so we would have been working
16 on a lot of things in preparation for the
17 mediation.
18 Q And do you recall working on
19 charts for the mediation?
20 A I recall working -- that we
21 worked on charts for the mediation,
22 illustrations that we may or may not have
23 wanted to use.
24 Q And what sort of things did you
25 consider in these illustrations?

Page 127

1 Peter Shapiro
2 A We used it to try to explain to
3 an intelligent layman like the mediator how
4 these complex agreements work.
5 Q And do you recall any specific
6 concepts that were used to try to present
7 those -- present that to the mediator?
8 MR. LAWRENCE: Hold on. Are we
9 now going to agree that we are
10 exchanging stuff that was prepared for
11 mediation, because I thought that
12 we -- both sides had taken the
13 position that mediation materials were
14 not subject to discovery. Maybe I am
15 wrong.
16 MS. SAWYER: I think our
17 position is that we did not designate
18 the expert we used for mediation as a
19 testifying expert, which opens him up
20 to know what he considered and what he
21 learned as part of that process.
22 MR. LAWRENCE: You know, I
23 think you are potentially -- and I
24 don't mean that in a bad way -- but I
25 think you understand perfectly well

Page 128

1 Peter Shapiro
2 that when a person like Mr. Shapiro
3 does work that was used in support of
4 a claim, which he did, he is both
5 bringing to the fore some degree of
6 factual and expert testimony.
7 For the purposes of trying to
8 make sure there was no dispute about
9 using what he had done to support the
10 claim, we designated him so that you
11 wouldn't argue about whether or not we
12 should have designated him or not
13 because, obviously, some expertise
14 went into that April -- I think it
15 was, I guess -- I forget it was a
16 September date.
17 So I don't think that that has
18 anything to do with waiving the use of
19 him at mediation, so we are not going
20 to -- you know, unless you are willing
21 to say mediation is open ground, we
22 can agree to disagree about this
23 subject.
24 But we are not going to get
25 into mediation matters so --

Page 129

1 Peter Shapiro
2 MS. SAWYER: You can instruct
3 him not to answer. I think I am
4 entitled to lay my record. And, you
5 know --
6 MR. LAWRENCE: Sure.
7 MS. SAWYER: -- we are not --
8 we are not agreeing that mediation is
9 open ground because we were careful as
10 to the expert we used at mediation
11 versus the expert we designated here.
12 MR. LAWRENCE: I didn't realize
13 you used an expert at mediation, but
14 that's fine.
15 MS. SAWYER: So are you
16 instructing him not to answer that
17 question?
18 MR. LAWRENCE: Why don't we go
19 back to the question, and then we
20 can -- I can or you can -- if you're
21 going to continue to ask the
22 questions, you need to either restate
23 it or go back. Either way, that's
24 fine.
25 MS. SAWYER: I think I had

Page 130

1 Peter Shapiro
2 asked a question, so I think there was
3 a question pending.
4 (Reporter read back pending
5 question:
6 QUESTION: "And do you recall
7 any specific concepts that were used
8 to try to present those -- present
9 that to the mediator?")
10 A Yes.
11 Q And what were those concepts?
12 MR. LAWRENCE: And I will
13 instruct you not to answer that
14 question.
15 MS. SAWYER: On the grounds of
16 work product or mediation?
17 (There was an instruction not
18 to answer.)
19 MR. LAWRENCE: Mediation.
20 Q If you could turn to page 68,
21 entry number 132608.
22 A Yes.
23 Q It talks about "Lehman
24 alternative loss calculation from June of
25 2012."

Page 131

1 Peter Shapiro
2 Do you see that?
3 A Yes.
4 Q Do you recall what alternative
5 loss calculation was done in June of 2012?
6 A I recall alternative loss
7 calculations that we did. I can't tell
8 whether those were being done in June or
9 prior to that date.
10 Q And what alternative loss
11 calculations do you recall doing?
12 MR. LAWRENCE: If they were
13 with regard to the mediation, I would
14 instruct you not to answer.
15 Otherwise, you can answer.
16 A Then I will say I can't answer.
17 (There was an instruction not
18 to answer.)
19 Q You don't recall doing any
20 alternative loss calculation other than in
21 connection with the mediation?
22 A No.
23 Q Including the one that we
24 potentially looked at from October of 2009
25 with Mr. Vergara prepared another

Page 132

1 Peter Shapiro
2 spreadsheet?
3 A I wouldn't characterize that as
4 an alternative loss calculation. He was
5 using the same methodology.
6 Q And you had testified, I
7 believe, earlier that Swap Financial Group
8 constantly looks back at the valuations it
9 had done and reassessed them, correct?
10 A I said that -- I didn't say we
11 constantly did that. I said, as part of
12 our work, we would continually review
13 various aspects of our work, always curious
14 to try to make sure we were thinking of
15 every angle and thinking about things
16 correctly and updating assumptions for new
17 thoughts we might have.
18 Q And in connection with the
19 Washington TSA dispute, do you recall
20 updating your assumptions?
21 MR. LAWRENCE: Again, to the
22 extent that it was not done for
23 purposes of the mediation, I don't
24 have a problem with him answering the
25 question. I don't know if you want to

Page 133

1 Peter Shapiro
2 break the question down to make the
3 record clearer.
4 MS. SAWYER: I think I just
5 asked if he recalled. Maybe I
6 didn't --
7 MR. LAWRENCE: That's fine.
8 You can answer that question.
9 A Yes.
10 Q Do you recall updating your
11 assumptions for purposes of the mediation?
12 A Yes.
13 Q And do you recall updating your
14 assumptions other than for purposes of the
15 mediation?
16 A When you say "updating," Lauri,
17 what do you mean there? Do you mean where
18 we -- you know, an "update" could mean you
19 reran a model based upon those assumptions,
20 or it means you questioned them,
21 reconsidered them, thought about them some
22 more.
23 Q It's difficult for me clarify
24 because I don't know what your process was
25 in preparing your expert opinion, so you

Page 134

1 Peter Shapiro
2 had indicated that you --
3 A Preparing the expert opinion,
4 no.
5 Q And so the only updating of any
6 assumptions that you did would have been in
7 connection with the mediation?
8 A And in thinking through the
9 issue with regard to litigation.
10 Q And did you learn anything as
11 part of the mediation process that caused
12 you to update your assumptions?
13 A When you use the word
14 "assumptions" there, do you mean -- when an
15 analyst thinks about assumption, they often
16 mean the literal inputs that they use,
17 inputs like, for example, the one you have
18 asked a lot of questions about, about the
19 credit spread.
20 There is another way to think
21 of the word "assumptions"; and that is
22 assumptions in a bigger sense than just
23 inputs, about how you value a complex
24 illiquid contract like this.
25 Q I would say in the more broad

Page 135

1 Peter Shapiro
2 sense?
3 A In the broader sense
4 absolutely.
5 Q And what did you learn as part
6 of the mediation process that impacted your
7 analysis?
8 MR. LAWRENCE: I think -- I
9 instruct him not to answer that
10 question.
11 (There was an instruction not
12 to answer.)
13 MS. SAWYER: On the grounds?
14 MR. LAWRENCE: Mediation
15 privilege.
16 MS. SAWYER: I think, just --
17 just for purposes of clarity, I think
18 that the law is quite clear that any
19 facts or data that he considered in
20 reaching his opinion are a subject for
21 us to know.
22 MR. LAWRENCE: I --
23 MS. SAWYER: I understand your
24 position.
25 MR. LAWRENCE: I am not

Page 136

1 Peter Shapiro
2 guessing agreeing.
3 MS. SAWYER: I am just -- I am
4 stating ours clearly for the record.
5 MR. LAWRENCE: And I don't
6 disagree with that generally, but I
7 don't see how, since his opinion was
8 prior to the mediation, how the
9 question implicates that. But I think
10 we can argue about that later.
11 (There was a discussion off the
12 record.)
13 Q If you turn to page 37 of the
14 privilege log --
15 MR. LAWRENCE: Going back to
16 37.
17 Q Sorry. I skipped ahead too
18 far. There is two entries 132430, and
19 132431. And these both appear to be Word
20 documents created by yourself in June of
21 2013, which indicate that they're notes
22 regarding Lehman discovery.
23 Do you see that?
24 A Yes.
25 Q And do you recall creating

Page 137

1 Peter Shapiro
2 notes about the Lehman discovery?
3 A Yes.
4 Q And what -- what were you
5 taking notes on?
6 A Discussions about the Lehman
7 discovery.
8 Q So there were notes of
9 discussions that were had, or were there
10 notes of reviewing the discovery?
11 A I can't tell from this.
12 Q Do you recall looking at the
13 Lehman discovery and taking notes?
14 A When you say "looking at the
15 Lehman discovery," tell me what you mean by
16 that term.
17 Q Like the documents that were
18 being produced by Lehman or the questions
19 that were being asked by Lehman.
20 A The questions being asked by
21 Lehman of TSA or the questions being asked
22 of Lehman by TSA?
23 Q Either way.
24 A I recall discussing those, you
25 know, those -- both of those issues.

<p style="text-align: right;">Page 138</p> <p>1 Peter Shapiro</p> <p>2 Q Specifically, what do you</p> <p>3 recall taking notes on?</p> <p>4 A I -- my -- I am just trying to</p> <p>5 recall to the best of my ability now. But</p> <p>6 I recall specifically taking notes on what</p> <p>7 we requested of Lehman.</p> <p>8 Q And what were you noting?</p> <p>9 A I was noting all of the things</p> <p>10 that I would want to see.</p> <p>11 Q So do you believe these are</p> <p>12 notes of things that you would want</p> <p>13 Washington TSA to request from Lehman?</p> <p>14 A I can't tell from this.</p> <p>15 Q But you recall making such</p> <p>16 notes?</p> <p>17 A I recall making notes on that</p> <p>18 subject specifically. I don't know if they</p> <p>19 are these notes.</p> <p>20 Q Do you recall looking at the</p> <p>21 documents Lehman produced in discovery?</p> <p>22 THE WITNESS: Could you say --</p> <p>23 read that back, please, for me.</p> <p>24 (Reporter read back pending</p> <p>25 question.)</p>	<p style="text-align: right;">Page 140</p> <p>1 Peter Shapiro</p> <p>2 categories of documents you asked for?</p> <p>3 A Somewhat.</p> <p>4 Q What are those?</p> <p>5 MR. LAWRENCE: Go ahead.</p> <p>6 THE WITNESS: Should I answer</p> <p>7 that?</p> <p>8 MR. LAWRENCE: Yes.</p> <p>9 A Specific documents as to -- as</p> <p>10 to how Lehman would have valued the</p> <p>11 document -- the agreement when it was</p> <p>12 entered into.</p> <p>13 Q Anything else?</p> <p>14 A Not that I can recall.</p> <p>15 Q And what documents do you</p> <p>16 recall being given?</p> <p>17 A I would have to go back and</p> <p>18 look. I haven't -- you know, I have to</p> <p>19 refresh my memory.</p> <p>20 Q Do you recall sitting here any</p> <p>21 specific documents you were given that</p> <p>22 Lehman produced?</p> <p>23 A As I am sitting here, I'm not</p> <p>24 recalling any -- anything specifically.</p> <p>25 Q And --</p>
<p style="text-align: right;">Page 139</p> <p>1 Peter Shapiro</p> <p>2 A When you say the "documents,"</p> <p>3 do you mean all of the documents?</p> <p>4 Q Any of the documents.</p> <p>5 A Yes.</p> <p>6 Q Okay. And how did you get</p> <p>7 access to those documents?</p> <p>8 A Through the -- through counsel.</p> <p>9 Q And were you given specific</p> <p>10 documents by counsel?</p> <p>11 A Yes. I can't be given</p> <p>12 nonspecific documents, I don't believe.</p> <p>13 Q Well, you could be given access</p> <p>14 to a database of documents that you could</p> <p>15 have looked at.</p> <p>16 A No, I wasn't give access to a</p> <p>17 database.</p> <p>18 Q And how where the documents you</p> <p>19 were given by counsel, how were they</p> <p>20 identified? Did you request them?</p> <p>21 A I believe so.</p> <p>22 Q And what sort of requests would</p> <p>23 you make for documents?</p> <p>24 A Ones that piqued my curiosity.</p> <p>25 Q And do you recall the specific</p>	<p style="text-align: right;">Page 141</p> <p>1 Peter Shapiro</p> <p>2 A I know we have been back and</p> <p>3 forth on this.</p> <p>4 Q How were the documents given to</p> <p>5 you?</p> <p>6 A They may have been shown to me</p> <p>7 by counsel or E-Mailed to me by counsel, I</p> <p>8 think. I have to go back and refresh my</p> <p>9 memory. I think -- you know, I have to go</p> <p>10 back and check.</p> <p>11 Q What would you check?</p> <p>12 A I'd check, you know, my</p> <p>13 E-Mails; and to the extent that they are</p> <p>14 not there, I'd have to assume anything I</p> <p>15 saw was shown to me by counsel.</p> <p>16 Q And do you recall seeing any</p> <p>17 documents that address the issue about</p> <p>18 Lehman would have valued the contract?</p> <p>19 A At inception?</p> <p>20 Q Um-hum.</p> <p>21 A We have talked about this. I</p> <p>22 have talked about this back and forth. You</p> <p>23 know, I have to refresh to see what we --</p> <p>24 what -- how much I am recalling based upon</p> <p>25 conversations with counsel and how much</p>

Page 142

1 Peter Shapiro
2 based upon documents I saw.
3 Q Do you recall seeing any
4 documents that gave you any insight into
5 that issue?
6 A If I -- if I had, it would have
7 been, you know, more than a couple of
8 months ago. So my recollection is a little
9 fuzzy on this.
10 You know, I took a long
11 vacation between when that happened and
12 when I came back, and I allowed my mind to
13 go a little blank during the vacation.
14 Q Do you recall approximately
15 when you would have seen these documents?
16 A I went away on vacation January
17 14th, so it would have been prior to that.
18 Q Would it have been prior to
19 your last deposition?
20 A I can't recall.
21 Q If you could turn to page 55 of
22 the privilege log, entry 132533.
23 A Okay. Hang on just one second.
24 533?
25 Q Yes. It indicates it's a PDF

Page 143

1 Peter Shapiro
2 of notes of Lillian Chern from October of
3 2013 --
4 A Right.
5 Q -- regarding maturity date
6 valuation and termination date.
7 Do you see that?
8 A Yes.
9 Q Do you recall seeing any of
10 Ms. Chern's handwritten notes in the fall
11 of 2013?
12 A No.
13 Q Have you at any time seen any
14 of Ms. Chern's handwritten notes regarding
15 the RFA?
16 A No.
17 Q Have you seen any handwritten
18 notes by any of your other colleagues
19 regarding this RFA?
20 A No.
21 Q And do you personally keep
22 handwritten notes?
23 A I don't.
24 Q The notes we looked at before,
25 they were Word documents?

Page 144

1 Peter Shapiro
2 A Correct.
3 Q Is that the way you generally
4 would keep your notes regarding a matter?
5 A Yes.
6 Q And do you take notes on
7 specific topics, or do you kind of keep
8 running notes on a -- on a given matter?
9 A It's ad hoc. It depends on
10 what's going on.
11 Q Do you recall in this situation
12 how you kept track of your notes?
13 A Which aspects of this
14 situation?
15 Q The Washington RFA dispute
16 which has been going on for many years,
17 have you kept track of your notes?
18 A In a variety of different ways.
19 Often, I am traveling for business, so I'm
20 not in a position to take notes; so, you
21 know, you have circumstances like that.
22 When I am in a position to take
23 notes in the office, sometimes I do;
24 sometimes I don't. Sometimes I pop up a
25 blank Word screen and just write out some

Page 145

1 Peter Shapiro
2 things just to keep track of the
3 conversation so I don't forget to return to
4 a topic I want to -- have something I want
5 to mention to the person I am speaking
6 with.
7 In that case, usually, I just
8 will, you know, not retain those, just
9 erase them after the conversation has gone
10 over, or, rather than erase them, just not
11 save them.
12 In other cases, I may actually
13 keep some notes like the ones that you see
14 references to.
15 Q Do you have a file where you
16 keep notes relating to the Washington TSA
17 dispute?
18 A You know, I keep them in -- I
19 will save them to that folder if I am
20 retained, yes.
21 Q Is that an E-Mail folder, or do
22 you have another folder on your computer?
23 A It's a -- it's a Word document.
24 It's not saved. It's an E-Mail. It's
25 saved in a folder that is dedicated to that

Page 146

1 Peter Shapiro
2 client.
3 Q And would you save Excel
4 spreadsheets or other things there as well?
5 A Yes, assuming, Lauri, I chose
6 to save them, of course.
7 Q Of course.
8 If you could turn to page 78,
9 entry 132682, which is the second line,
10 it's a Word document created by you. And
11 it says:
12 "Notes on Wash Tobacco,
13 internal notes discussing TSA claim with
14 Lehman, Lehman bankruptcy."
15 Do you see that?
16 A Correct.
17 Q And this was created in the
18 summer of 2010; do you see that?
19 A You know, you are saying
20 "created." That's just the date that's on
21 it. Yeah, that may have been the last
22 update. It may have been created earlier.
23 Q So it might have been a running
24 document that you updated?
25 A I can't tell.

Page 147

1 Peter Shapiro
2 Q All right.
3 A I just -- you used the word
4 "created." I didn't want to agree with
5 that word.
6 Q Do you know -- do you know what
7 you were noting in the summer of 2010 in
8 this Word document?
9 A No.
10 Q And then the next entry,
11 132684, it's an Excel spreadsheet from
12 April 2012 from Bob Cook, regarding "Lehman
13 mediation statement."
14 Do you see that?
15 A Yes.
16 Q Do you recall what that
17 spreadsheet was for Mr. Cook?
18 A Based upon this entry with a
19 date and a time, no idea.
20 Q Do you recall Mr. Cook
21 providing Excel spreadsheets to you?
22 A Yes, I do.
23 Q Okay. And this is not an
24 isolated incident of the spreadsheet
25 showing up or spreadsheets for Mr. Cook

Page 148

1 Peter Shapiro
2 showing up in this log. Do you recall what
3 those spreadsheets discussed or contained?
4 A What this spreadsheet was?
5 Q In general, you said you
6 recalled receiving spreadsheets from
7 Mr. Cook?
8 A Yes.
9 Q What topics were those
10 spreadsheets on?
11 A He was looking at -- the ones
12 that I recall had to do with Lehman -- with
13 TSA's accumulative loss due to Lehman's
14 failure to honor its agreement.
15 Q And do you recall him providing
16 that spreadsheet on a regular basis?
17 A No.
18 Q Occasional basis?
19 A Occasional.
20 Q Do you recall him providing
21 spreadsheets containing any other
22 information?
23 A I'm not recalling. There may
24 have been, but I'm not recalling.
25 Q And you can't tell from this

Page 149

1 Peter Shapiro
2 entry whether that is that spreadsheet or
3 not?
4 A Yeah, I don't think anybody
5 could unless they had, you know, an idiot
6 savant like memory for dates and time.
7 Q I would agree. I would agree.
8 THE WITNESS: "Idiot savant,"
9 Tab, you have that one?
10 THE REPORTER: Yes.
11 Q If you go to page 86, entry
12 132755, which is a Word document dated
13 June 2010, which is your internal notes
14 again.
15 Do you recall what these
16 internal notes were about?
17 A I can't tell.
18 Q The next entry is 132760, which
19 is an Excel spreadsheet created by Lillian
20 Chern in August of 2010. It's an internal
21 spreadsheet on "termination amount in
22 claim."
23 Do you see that?
24 A Yes.
25 Q Do you recall what analysis she

Page 150

1 Peter Shapiro
2 was conducting in the summer of 2010?
3 A I don't.
4 Q Would you have -- were you
5 working with Ms. Chern in the summer of
6 2010 as to the Washington matter?
7 A She -- as I -- as I have
8 testified before, all of us sit together as
9 a team; so everyone has to juggle multiple
10 tasks continually. So I would have been
11 working with her throughout that period on
12 matters that pertain to something as
13 important as this claim.
14 Q And then if you look down at
15 132768, the last entry on this page, it's
16 from May of 2012. It's a Word document of
17 Lillian Chern. It says:
18 "Internal notes regarding RFA
19 and bond."
20 Do you see that?
21 Did you ever see any of her
22 typewritten notes that she prepared
23 regarding this matter?
24 A No.
25 Q Would you have discussed -- but

Page 151

1 Peter Shapiro
2 you would have discussed this matter with
3 her?
4 A Yes.
5 Q On a -- on a regular basis,
6 when appropriate basis?
7 A On a "when appropriate" basis,
8 you know, over a -- obviously, a very
9 extended period of time on a continual
10 basis.
11 Q If you turn to page 89 --
12 A Yes.
13 Q -- the first entry 132784,
14 which is an Excel spreadsheet from
15 September of 2012, from -- created by
16 Lillian Chern. It says:
17 "Spreadsheet of claim variables
18 in components for calculation of claim."
19 Do you see that?
20 A Right.
21 Q Do you recall what that
22 spreadsheet is about?
23 A I can't tell from this.
24 Q Do you know what "claim
25 variables" might refer to?

Page 152

1 Peter Shapiro
2 A I don't know what she would
3 have meant by that.
4 Q Do you recall in the summer
5 of -- or September of 2012, so after the
6 mediation, do you recall there being
7 analysis of the claim variables and the
8 calculation of the claim?
9 A I can't recall. I really --
10 you know, as I said, this is subject of
11 continual on-and-off discussions.
12 Q But does this refresh your
13 memory that, even after the mediation,
14 there was still discussions about the
15 valuation of the claim going on at Swap
16 Financial?
17 A You know, as I have said, we
18 have had -- we continually have discussed
19 this subject when the mediation failed --
20 and I'm not sure if the mediation had even
21 failed by -- at this point.
22 The mediation still may have
23 been open, Lauri. Do you know the date it
24 was declared closed?
25 Q I don't sitting here.

Page 153

1 Peter Shapiro
2 A You know, it's possible there
3 were -- if the mediation remained open, and
4 there were still queries about it, we would
5 have been thinking about it in that regard.
6 Once the mediation closed, we
7 may have been anticipating litigation and
8 thinking about that.
9 Q What sort --
10 A You know, it's an important
11 matter. This is, you know -- you know,
12 more than 40 million, you know, which a
13 public entity has not been paid. It's owed
14 to them.
15 Q Do you recall any of the
16 internal discussions that took place at
17 Swap Financial Group about the valuation of
18 the claims, the types of discussions that
19 you are talking about?
20 MR. LAWRENCE: At any time
21 or --
22 A Do I recall the internal
23 discussions?
24 Q Yes.
25 A As I said, we have had

Page 154

1 Peter Shapiro
2 continual discussions on this.
3 Q And what sorts of things have
4 you discussed?
5 A We have discussed, you know,
6 all of the -- all of elements of how you
7 think about valuing something like this
8 which is illiquid, you know, where there is
9 a closed market, where the market didn't
10 exist, how would you would properly value.
11 We, you know, looked at the
12 questions which Lehman has posed and
13 discussed them internally. And we take
14 them very seriously.
15 We look at the questions of how
16 you -- how you value it using alternative
17 methodologies in the absence of the ability
18 to replicate the agreement.
19 You know, we have discussed how
20 you would look to reinvest the funds, in
21 the agg -- you know, on a continual basis.
22 As you know, we have discussed
23 ways in which we might crystallize the
24 claim or even sell the claim absent
25 crystallization, you know, all of those

Page 155

1 Peter Shapiro
2 kinds of things.
3 Q What elements of valuation do
4 you recall discussing with members of Swap
5 Financial Group?
6 A All of the ones I have just
7 outlined.
8 Q You indicated that the first
9 thing you remember discussing would be the
10 different elements of the valuation.
11 What are those different
12 elements of the valuation of an illiquid
13 product like this?
14 A In terms -- when you ask the
15 question in terms of the elements of
16 valuation, using the hypothetical
17 replication method that was used in the
18 loss memo, using alternative loss
19 calculations --
20 Q I am trying to ascertain what
21 discussions took place at Swap Financial
22 Group. So if you did both of those, we can
23 take them one at time.
24 A Yes, we have done all of those.
25 Q So what elements of valuation

Page 156

1 Peter Shapiro
2 have you discussed at Swap Finance Group
3 regarding your hypothetical swap valuation
4 methodology?
5 A We revisit all of our inputs
6 and look at those inputs, and, when there
7 are questions, scratch our heads again and
8 legitimately go back and say:
9 "You know, do -- does Lehman's
10 counsel have a point here that they are
11 trying to make? How do we look at that
12 point? How do we beat it up and think
13 about it every which way?"
14 We look at the credit spread.
15 We look at the CP spread, you know, the
16 deliverables spread to express it
17 correctly, "deliverables" with a plural.
18 You know, we look at the profit
19 margin. We look and see if we have left
20 out anything that we should be thinking
21 about. We try to be meticulous and
22 thorough in our work here and revisit and
23 not to be arrogant that we know all the
24 answers.
25 Q What discussions do you recall

Page 157

1 Peter Shapiro
2 having about the credit spread?
3 A You know, we have looked at the
4 credit spread, you know, multiple ways. We
5 have looked at:
6 How do you -- how do we try to
7 get to a credit spread?
8 And we look at, also:
9 What do we mean by a "credit
10 spread" in this set of circumstances, where
11 there is no market?
12 Q So what are the multiple ways
13 you looked at the credit spread in this
14 situation?
15 A We look at -- you know, look
16 at:
17 How do you -- how do you
18 determine a credit spread?
19 You don't have a CDS market.
20 You don't have dealers saying where they
21 would do this or live quotes because you
22 have a closed market, a market that's shut
23 down.
24 And, you know, then how do
25 you -- how do you look at it? You look at

Page 158

1 Peter Shapiro
2 the bond spread, which is what we used,
3 what's that bond spread appropriately. We
4 spread it from -- as you know, a -- you
5 know, a strong credit, but not a triple A
6 credit.
7 If you looked at other ways to
8 do it, you could have spread it to a triple
9 A credit. That would have made the credit
10 spread even wider. So, you know, we looked
11 at that question.
12 We looked at the question of,
13 you know:
14 How appropriate is it to use
15 the -- to use the bond spread, one of the
16 questions which your people had raised
17 questions about extensively?
18 What are the pros and cons of
19 using a bond spread and reexamining that?
20 What is contained within a bond spread, and
21 what's not contained within a bond spread?
22 You know, and then looking
23 beyond that, when we say "credit spread" --
24 and I said this in my prior deposition
25 testimony.

Page 159

1 Peter Shapiro
2 To a certain extent, there are
3 multiple concepts which get introduced
4 through the aggregate spread, meaning
5 credit spread, deliverable spread, profit
6 margin.
7 There is a certain extent to
8 which there is a fungibility between those
9 elements. In other words, the firm -- a
10 bank itself would look at its aggregate
11 spread and say:
12 "Are we compensating ourselves
13 all-in for all of the risks we are taking,
14 and the profit we should be paid for taking
15 on those risks?"
16 And looking at it as a whole
17 and saying:
18 "Okay. Are we close on this?
19 Should we cover ourselves? Should we be
20 wider because we can't hedge these risks?
21 We don't really know if it's being
22 appropriately priced. We don't have an
23 active market. Where do we put that
24 spread?"
25 So we have reexamined all of

Page 160

1 Peter Shapiro
2 those assumptions again and again to look
3 at whether or not our number felt right.
4 Q In terms of the credit spread
5 specifically, other than comparing the bond
6 to a triple A index, did you calculate a
7 credit spread in any other alternate ways?
8 A I don't think so. There is no
9 alternate way to calculate it.
10 Q Have you seen Mr. Greuer's
11 expert report?
12 A Yes.
13 Q And he calculates a credit
14 spread based on the Bloomberg CVA function?
15 A Right.
16 Q Did you consider calculating a
17 credit charge based on that?
18 A No, we think he's wrong.
19 Q And why do you think he's
20 wrong?
21 A He doesn't -- doesn't --
22 doesn't account for lots of elements in
23 here.
24 Q Account for lots of elements in
25 the credit spread?

Page 161

1 Peter Shapiro
2 A Yes, he misses -- he misses --
3 you know -- and I'm not going to
4 characterize why he misses them; he's
5 obviously on your side and trying to
6 minimize what you owe the public in this
7 case.
8 The -- but, you know, he's come
9 up with numbers which exaggerate very much
10 and inaccurately on the low side.
11 Q Using the Bloomberg CVA
12 function?
13 A Using that is well as other
14 inputs.
15 Q And did you consider using the
16 Bloomberg CVA function to determine a
17 credit charge?
18 A I don't know if James did. He
19 might have thought about that. But I
20 didn't specifically go back to him and say:
21 "Hey, what if you fed this into
22 Bloomberg CVA?"
23 I am trying to remember when
24 Bloomberg initiated CVA function, if they
25 even had it in place in '09. CVA may be

Page 162

1 Peter Shapiro
2 newer than that.
3 Q But in your subsequent
4 discussions, did you ever consider using
5 the Bloomberg CVA function?
6 A No.
7 MS. SAWYER: We can take a
8 break. Thank you.
9 (There was a discussion off the
10 record.)
11 (There was a lunch break off
12 the record.)
13 Q So before the break you had
14 listed several things that you had
15 discussed internally at Swap Financial
16 relating to the Washington valuation after
17 the memo was prepared in September of 2009.
18 One of the things you mentioned
19 that was discussed internally at Swap
20 Financial was alternative methodologies.
21 What alternative methodologies did you
22 discuss among your colleagues at Swap
23 Financial?
24 A Alternative ways to value the
25 contract is what you mean by "alternative

Page 163

1 Peter Shapiro
2 methodologies," I assume.
3 Q Okay.
4 A And, you know, we called the
5 base methodology, the one that's used in
6 the loss memorandum, hypothetical
7 replication, in the absence of any true
8 replication, because, as both sides have --
9 have pretty much agreed, there was no
10 market.
11 So we say that's a hypothetical
12 replication, so you are trying to say, if
13 there were a market, where would it be
14 priced. It's a -- you know, you are
15 getting out on a -- on a long branch that
16 could get thin as you start to think about
17 that obviously, so then you look at other
18 ways to do it.
19 We looked principally at two
20 other ways. One is to say:
21 Is there a similar financial
22 contract type of financial agreement that
23 would replicate in most respects the RFA.
24 And the other way we look at it
25 was to say:

Page 164

1 Peter Shapiro
2 Okay. Assume there is no other
3 way to replicate closely. What would be
4 Washington's loss? What would be TSA's
5 loss if it could only stay in short-term
6 investments as are permitted under its
7 indenture?
8 Those -- those were the two
9 principal alternative methodologies we
10 examined.
11 Q And in looking at the first
12 one, a similar financial contract that
13 would replicate the terms of the RFA, did
14 you reach a conclusion as to whether there
15 was such a similar financial contract
16 available?
17 A We looked at -- at the
18 alternative of using two different kinds of
19 swaps. Remember what a swap does. A swap
20 pays one party fixed, and the other party
21 floating, right.
22 Q Right.
23 A And under the RFA, you are
24 having the same kind of cash flows; that
25 is, Washington is receiving fixed and

Page 165

1 Peter Shapiro
2 giving up the floating that it's earning on
3 its continually revested short-term
4 investments.
5 So we said:
6 What if instead -- if we can't
7 do a forward purchase agreement, if instead
8 what we do is say:
9 "Okay. Washington, you
10 reinvest the funds yourself in short-term
11 instruments that are permitted under your
12 indenture. And then, in addition -- in
13 order to try to create a fixed yield, you
14 enter into a swap where you receive fixed
15 from a dealer and pay floating to the
16 dealer."
17 Simple as that, to think about
18 the underlying structure.
19 And then we had to say:
20 Okay. How do we deal with the
21 various risks in that, to make it so it is
22 like the deal, that it had like the
23 bargain, if I put it that way, that it had
24 with Lehman?
25 One of the -- probably, the

Page 166

1 Peter Shapiro
2 most fundamental issue you have to look at
3 is the RFA very importantly gave TSA the
4 right to be able to invade it at any time,
5 to cash out of it at any time without
6 paying a premium or a penalty.
7 And, you know, it's basically
8 thinking of that at six-month intervals
9 because you have got six-month instruments
10 underlying. So we said:
11 Let's construct a swap that
12 looks like that. How much would TSA get
13 paid under a swap where it had the right to
14 be able to cash out of that swap at par at
15 each six-month interval?
16 So we priced that up.
17 We looked at that, at the
18 critical issue of credit spread; that is:
19 What would the dealer charge as
20 a credit spread for facing a tobacco entity
21 where it came at the bottom of the
22 waterfall?
23 Okay. In other words, the
24 bank, anything it needed to collect in the
25 event there was a default, would be --

Page 167

1 Peter Shapiro
2 would be subordinated to other obligations
3 of the Authority.
4 And what we found in
5 conversations with dealers and what makes
6 sense to us intellectually, was, if we had
7 the six-month par put or par call, if you
8 want to look at it that way, if they had
9 the right -- if TSA had an up-front right
10 to terminate at par every six months, the
11 dealers would view that as not -- as
12 insignificant credit exposure because
13 credit exposure derives from the
14 circumstance, where, upon termination, TSA
15 would owe the dealer something.
16 If every six months they can
17 terminate at par, there is almost no
18 circumstance where there is a substantial
19 amount that could be owed to a dealer.
20 So we knew that would not have
21 a credit problem. They wouldn't have this
22 credit spread issue, which was otherwise a
23 real impediment to finding an alternative.
24 So that -- that was scenario --
25 that was swap one that we looked at.

Page 168

1 Peter Shapiro
2 Q Okay.
3 A Okay.
4 Q Did you put a value on that?
5 A Yes.
6 Q And what was that value?
7 A I don't have it in front of me,
8 but it produced a value substantially
9 similar to what the loss was. It was very
10 close.
11 Q Do you have -- do you have
12 records showing what that value would be?
13 A We have materials that we used
14 in the mediation on this because we
15 actually did this as part the mediation.
16 So to the extent this gets into
17 the mediation privilege, I defer to counsel
18 on this.
19 Q Did you do it before the
20 mediation?
21 A In preparation for the
22 mediation.
23 Q And why did you do it in
24 preparation for the mediation?
25 A As we thought about these

Page 169

1 Peter Shapiro
2 questions more deeply.
3 Q And, again, do you have records
4 that would show what the valuation --
5 A Yes.
6 Q -- is?
7 A Yes.
8 Q And what would those records
9 be?
10 A What would they be?
11 Q Is there a memorandum that was
12 prepared?
13 A I believe so. Yeah.
14 Q That was given to TSA?
15 A For the mediation, for the
16 mediation.
17 Q Let me ask my question again.
18 So there was a memorandum
19 prepared for Washington TSA at or about the
20 time of the mediation?
21 A Yes.
22 Q That was actually given to
23 them?
24 MR. LAWRENCE: You can say
25 whether it was or not.

Page 170

1 Peter Shapiro
2 A Yes.
3 MS. SAWYER: Okay. I would
4 request a copy of that memorandum.
5 MR. LAWRENCE: Take that under
6 consideration.
7 (Memorandum prepared for
8 mediation requested.)
9 Q You said that was the first of
10 the swaps you considered. What was the
11 second swap you considered?
12 A The second swap we said is:
13 Okay. Just for the sake of it,
14 let's ignore the legal provisions of the --
15 of the indenture and the FPA, the critical
16 provision being the need to invade the
17 reserve fund, in other words, the need to
18 be able to have a par cancellation option
19 on the swap.
20 And let's say we don't really
21 need that for the first several years, and
22 that the first event that we would need
23 that at would be at the expected -- the
24 earliest expected redemption date on the
25 bonds, assuming that -- contrary to the

Page 171

1 Peter Shapiro
2 history that has been experienced so far,
3 we would end up with an early redemption
4 due to what are referred to as the "super
5 sinkers," if you know what I -- what I mean
6 there.
7 Q The turbo bonds?
8 A The turbo bonds, yeah, yeah,
9 exactly.
10 And, you know, the turbo bonds
11 depended on a certain level of receipts
12 under the tobacco settlement, which has
13 been slower and slower as -- you know,
14 thank goodness smoking has declined, you
15 know, generally -- and as there have been
16 problems with participating manufacturers
17 under the master settlement agreement.
18 But we said:
19 Let's look at that as just a
20 hypothetical. What if we really thought:
21 Okay. We don't really
22 quote-unquote need that par cancellation
23 option in this swap structure until the
24 earliest possible date that we think is
25 realistic for early redemption of the

Page 172

1 Peter Shapiro
2 bonds, in the event that we have, you know,
3 realized tobacco revenues that would allow
4 are those turbo bonds to take effect.
5 So we said:
6 Let's -- let's examine a swap
7 that would look like this, no call. The
8 first par call would not be until a
9 designated date, 2019, 2022, whatever we
10 thought was the earliest reasonable date.
11 And then subsequent to that, it
12 would be every six months. And we examined
13 that also, an alternative.
14 Now, that, Lauri, presents a
15 different issue with regard to credit,
16 because, now, the swap dealer is going to
17 be concerned about its credit exposure to
18 Washington TSA. It's going to say:
19 "Hey, there is not a par call
20 until whatever that first day is. And
21 during that period of time, I, Mr. Bank, am
22 exposed to the risk that Washington
23 would -- would be unable to pay me.
24 Okay. So we discussed that
25 with a number of dealers in the market and

Page 173

1 Peter Shapiro
2 said:
3 "How much of a credit spread
4 would you need on that?"
5 And what came back was very
6 little enthusiasm for the structure. And
7 if it were to be done, they would basically
8 hypothecate an early termination option at
9 around two years. In other words, they
10 would build it, the pricing of it as though
11 Washington had a par termination at two
12 years, in other words, to limit their
13 credit exposure to TSA to only two years by
14 embedding an implied par call at that
15 two-year point.
16 Guess what? It produces a
17 similar loss amount once you do that to the
18 first swap structure that had six-month
19 calls anyhow.
20 So we didn't get the -- we were
21 hoping we could get a lower loss amount, a
22 higher replacement value by that structure,
23 but we couldn't.
24 Q And which dealers did you talk
25 to about the second swap?

Page 174

1 Peter Shapiro
2 A I'm not recalling offhand, but
3 we talked to a number of dealers that we
4 thought might participate.
5 Q Okay. And did you -- did you
6 actually calculate a valuation associated
7 with this hypothetical?
8 A Yes.
9 Q And what time period was that?
10 A That was, again, immediately
11 prior to the mediation.
12 Q And, again, did you prepare a
13 memorandum or something reflecting this
14 valuation?
15 A Yes.
16 Q And that was for Washington
17 TSA?
18 A Yes.
19 MS. SAWYER: And then, again, I
20 would request a copy of that.
21 MR. LAWRENCE: Sure.
22 Q Do you recall what the
23 valuation was for this swap?
24 A As I said, it was remarkably
25 close to the other scenarios.

Page 175

1 Peter Shapiro
2 Q Do you recall what the credit
3 charge was associated with this swap?
4 A The credit charge was entirely
5 derived from looking at two-year
6 termination options, so you'd calculate the
7 option that would produce the equivalent of
8 what a credit reserve would be.
9 Q And for the first swap, the par
10 call every six months, was there any credit
11 charge imposed in connection with that?
12 A We didn't -- we didn't think
13 there was even -- there was any but the
14 most incidental of credit charges. You
15 know, we put it in the aggregate spread at
16 a small number, six-month exposure
17 premiums.
18 Q And it's your understanding
19 that the -- excuse me -- the reserve fund
20 agreement provides for a par call every six
21 months?
22 A The reserve fund agreement
23 allows Washington TSA to be able to invade
24 that for specified reasons every six
25 months.

Page 176

1 Peter Shapiro
2 Q And so that -- that's why you
3 interpreted it as a par call availability?
4 A Yes, in terms of a swap, you
5 have to view it as a par call. You
6 can't -- unlike a reinvestment vehicle
7 where you can detail the causes that would
8 allow for a -- for funds to be drawn from
9 the agreement at no charge, in the swap
10 market, you can't tailor an option like
11 that.
12 You have to have what would be
13 referred to in market practice as a -- a
14 full economic option.
15 You know, in a -- in a -- in
16 the reinvestment universe, it's a
17 commonplace to have -- have options
18 embodied in agreements that are dependent
19 upon certain events that would occur
20 affecting the underlying bonds.
21 In swaps, there is no such
22 market for that. You can't do that, so you
23 have to put in, you know, what would be
24 a -- just a standard option, you know,
25 which we would refer to in the business as

Page 177

1 Peter Shapiro
2 a full economic option.
3 Q So you considered these two
4 swaps and came up with alternative
5 valuations based on either of these swap
6 assumptions?
7 A Correct.
8 Q And then you said you also
9 calculated what would be Washington TSA's
10 actual losses given its investment
11 restrictions required under the indenture?
12 A Correct.
13 Q And when was that valuation
14 done?
15 A That was done again at the
16 same -- in the same period.
17 Q For purposes of the mediation?
18 A Yes.
19 Q And did you actually place a
20 value on what you are calling Washington
21 TSA actual losses?
22 A Yes, anticipated actual losses,
23 yeah.
24 Q And you --
25 A And we looked at losses to date

<p style="text-align: right;">Page 178</p> <p>1 Peter Shapiro</p> <p>2 and then anticipated in the future.</p> <p>3 Q And how did you project the</p> <p>4 anticipated losses in the future?</p> <p>5 A That's the most difficult part</p> <p>6 to do, to say what are going -- what is</p> <p>7 going to happen with future floating rates.</p> <p>8 Jay asked questions about this</p> <p>9 extensively in my first deposition, and he</p> <p>10 wanted to, by virtue of his questions,</p> <p>11 repeatedly, you know, slavishly follow</p> <p>12 what's called the forward curve.</p> <p>13 We know however -- and every</p> <p>14 market participant knows this -- the</p> <p>15 forward curve is overwhelmingly wrong in</p> <p>16 projecting future floating rates. So we</p> <p>17 can't use the forward curve for projecting</p> <p>18 what something like an -- an agency like</p> <p>19 Washington would actually experience.</p> <p>20 The -- we have to say:</p> <p>21 What, instead, would we say is</p> <p>22 the reasonable assumption? So we looked at</p> <p>23 it at the period of time in question, and</p> <p>24 we said:</p> <p>25 What has been the experience so</p>	<p style="text-align: right;">Page 180</p> <p>1 Peter Shapiro</p> <p>2 In the near term, we have a --</p> <p>3 in the market, a significant amount of</p> <p>4 projected data that comes from the</p> <p>5 community of Fed watchers. And Fed</p> <p>6 watchers, you know, are basically</p> <p>7 economists, of which there are many, many,</p> <p>8 many, who publish their projected rate</p> <p>9 forecasts for periods typically up to two</p> <p>10 years, some beyond.</p> <p>11 And based upon that data, you</p> <p>12 could say:</p> <p>13 What is the expectation of</p> <p>14 people who study the Fed and look at</p> <p>15 markets and economies to say where interest</p> <p>16 rates should be?</p> <p>17 So you could see that with --</p> <p>18 you know, with some degree of intelligence.</p> <p>19 You are predicting the future. You can't</p> <p>20 say anything with certainty. You can just</p> <p>21 try to apply intelligence to it.</p> <p>22 When we look at that question</p> <p>23 today or over these last few years, we have</p> <p>24 greater knowledge about this than we have</p> <p>25 had in the past simply because the Fed has</p>
<p style="text-align: right;">Page 179</p> <p>1 Peter Shapiro</p> <p>2 far? Okay. We know the experience so far</p> <p>3 has been during the financial crisis when</p> <p>4 the Fed has held floating rates at</p> <p>5 historically low levels.</p> <p>6 And we can see that the losses</p> <p>7 to date created an experience which was</p> <p>8 above what Lehman was offering as its -- as</p> <p>9 its -- as what it would pay for the entire</p> <p>10 next, you know, whatever it was, you know,</p> <p>11 25 years or whatever it was remaining at</p> <p>12 the time we discussed it.</p> <p>13 So, you know, we knew that</p> <p>14 it -- it showed how absurd Lehman's number</p> <p>15 was.</p> <p>16 But we said:</p> <p>17 What would we reasonably say --</p> <p>18 based upon adding to what has already been</p> <p>19 experienced, what we could say might happen</p> <p>20 in the future. So we tried to think out</p> <p>21 that question.</p> <p>22 When you think of that</p> <p>23 question, you can use intelligence to try</p> <p>24 to figure that out, broken into the</p> <p>25 following components.</p>	<p style="text-align: right;">Page 181</p> <p>1 Peter Shapiro</p> <p>2 become much more transparent.</p> <p>3 It has provided what in the</p> <p>4 Fed's terminology what is called a "forward</p> <p>5 guidance," saying they do not intend to</p> <p>6 change the Fed funds rate, which, you know,</p> <p>7 is the key rate which would govern this</p> <p>8 thing, you know, the projection of where</p> <p>9 short-term rates will go.</p> <p>10 They do not intend to move that</p> <p>11 until 2014, 2015, whatever they happen to</p> <p>12 be saying in their forward guidance at the</p> <p>13 time.</p> <p>14 That's a break with past</p> <p>15 history. In the past the Fed was much more</p> <p>16 opaque. So the fact we have greater</p> <p>17 transparent allows to be able to project in</p> <p>18 the intermediate future with greater</p> <p>19 intelligence.</p> <p>20 Again, I'm not going to use the</p> <p>21 word "certainty." There is no such thing.</p> <p>22 Then beyond that we have to</p> <p>23 say:</p> <p>24 All right. What do we know to</p> <p>25 be able to think about the blue sky that</p>

Page 182

1 Peter Shapiro
2 comes beyond that?
3 And what we know is a starting
4 point reasonably, and we know a history
5 that goes before that. When we try to
6 extrapolate from history, we have
7 questions.
8 Do we look at history and
9 exclude extraordinary periods such as the
10 one that we have gone through since
11 Lehman's bankruptcy and say, "Rates were
12 just too low; that's an extraordinary
13 period, and it shouldn't be used for making
14 a forecast based on history"?
15 Do we exclude the period from
16 1979 to 1982, the period of time when the
17 prime went up to 20 percent, when, you
18 know, oil prices had quadrupled and caused
19 massive worldwide inflation and ultra-high
20 interest rates?
21 Do we try to find a benign
22 average?
23 This gets into crystal ball
24 gazing to a certain extent. And what we
25 kind of prefer to do is to say:

Page 183

1 Peter Shapiro
2 All right. If we know two
3 years out from now with some degree of
4 intelligence where we think floating rates
5 will be. And we believe they will revert
6 more towards a historical mean over an
7 extended period of time.
8 And we can draw a line on a
9 graph and say:
10 Let's assume that we -- that,
11 after this reasonably -- this reasonable
12 interim period -- let's say it goes to
13 2015 -- that rates will then slowly revert
14 towards norm.
15 We could draw a line in that
16 graph and say:
17 They will revert to norm after
18 two years, five years, and then flat line
19 it after that. That's how we would look at
20 it.
21 Others could look at it
22 differently. You have seen the expert
23 reports, who could say:
24 "No, we think we are going to
25 be in prevailing short-term rates at low

Page 184

1 Peter Shapiro
2 levels like this conceivably for the
3 future."
4 Others could say:
5 "We have to be very
6 conservative and assume that today's rates
7 could persist."
8 When we looked at it, we looked
9 at instead and said:
10 Let's assume a slow reversion
11 to mean.
12 Q What was the mean that you were
13 reverting to?
14 A I would have to go back and
15 look.
16 Q But you have records that would
17 show that?
18 A Yeah.
19 Q And so you took the historical
20 investment rate, the Fed projection for
21 some interim time period, and then an
22 upward sloping curve to revert to the mean?
23 A Not the Fed -- the Fed watch
24 projection.
25 Q The Fed watch --

Page 185

1 Peter Shapiro
2 A You know, if you think about
3 it, you can see there's a Bloomberg page
4 called OUTL, Outlook, which gives you
5 projections for all sorts of rates
6 everywhere.
7 Q And then after that time
8 period, then you had a slow upward curve to
9 revert to the mean over some time period?
10 A "Curve" would be too fancy. It
11 was just a straight line.
12 Q And do you recall the time
13 period in which you assumed that there
14 would be a reversion to the mean?
15 A I don't. It was -- you know,
16 we didn't want to make it too long because
17 too long would be unreasonable, you know.
18 And, remember, we are trying to
19 be reasonable. We are trying to think:
20 "What would a fair person try
21 to say here, not trying to favor Lehman,
22 not trying to fair TSA?"
23 We are really trying to say
24 what's reasonable. We are not trying to
25 make a -- an advocate's argument here.

Page 186

1 Peter Shapiro
2 Q And where did you get the
3 information about what the mean would be?
4 A I think we derived that by
5 looking back at interest rate history like
6 we do all the time.
7 And, you know, again, part of
8 that question, Lauri, is:
9 What's the relevant period, and
10 do you knock out extraordinary periods?
11 Q And do you recall what -- how
12 you answered those assumptions in doing
13 this analysis?
14 A I would have to look back. I
15 think we said we knock out extraordinary
16 periods.
17 Q And did you actually do this
18 analysis and come up with a concluding
19 valuation?
20 A Yes.
21 Q And what was that number?
22 A You are going to be shocked.
23 It comes very close to the other numbers we
24 looked at. It -- you know, we are -- they
25 are all within a few million dollars of

Page 187

1 Peter Shapiro
2 each other. And that says something to me.
3 Q When did you conduct this
4 analysis?
5 A Pre-mediation.
6 Q At what point before the
7 mediation?
8 A You know, in the weeks or days
9 leading up to the mediation.
10 Q Just because there is, you
11 know, three years between the time the
12 claim was filed and the mediation, so it's
13 closer to the mediation than the claim.
14 A It was toward -- yeah -- it was
15 for -- it was initially done for the
16 mediation.
17 Q And did you prepare a
18 memorandum outlining this analysis for
19 Washington TSA?
20 A In the same memorandum we
21 previously referred to.
22 Q So this is -- this is one
23 memorandum that contains all of these
24 alternative valuations?
25 A Correct.

Page 188

1 Peter Shapiro
2 MS. SAWYER: I'd request a copy
3 of that.
4 MR. LAWRENCE: You have done
5 that.
6 (Memorandum containing
7 valuations requested.)
8 Q Are there any other alternative
9 methodologies that have been considered by
10 anyone at Swap Financial for valuing this
11 reserve fund agreement?
12 A I can't say what anybody else
13 has thought in their heads, but these are
14 the ones that we have discussed.
15 Q And you -- you have not thought
16 of any others?
17 A You know, I rack my brain on
18 these things because it's obviously not
19 just Washington. You know, we have got
20 other, similar contracts that are in
21 dispute with the Lehman Estate, as you are
22 aware.
23 And, you know, I try think if
24 there is some other way to reasonably look
25 at this.

Page 189

1 Peter Shapiro
2 You know, our goal here never
3 is to try to, quote-unquote, take advantage
4 of a bankrupt counterparty.
5 Our goal here is to make it so
6 that the public, which has been deprived of
7 what they had bargained for with a major
8 financial institution, is able to establish
9 a claim as accurately as possible.
10 Q So sitting here today, you
11 don't recollect any other alternative
12 methodologies that you considered?
13 A I can't think of any. Are
14 you -- are you thinking of one that -- that
15 you know of?
16 Q There was a discussion about
17 the use of the Lehman inception charges
18 that you discussed at your last deposition.
19 Did you do an analysis based on
20 that?
21 A No. We -- the use of the
22 Lehman inception charges was really more to
23 give the lie to Lehman's contention that no
24 credit charge should be included here, to
25 show that Lehman, of course, had itself put

Page 190

1 Peter Shapiro
2 a credit charge in when it first entered in
3 the contract in a functioning healthy
4 market.
5 And, obviously, any rational
6 person would say:
7 "If there is a credit charge in
8 that market, that credit charge is going to
9 be a heck of a lot bigger in a
10 non-functioning, you know, unhealthy
11 market."
12 Q Did you -- is that your expert
13 opinion?
14 A Yes.
15 Q And what is that based upon?
16 A That credit charges expand
17 during unhealthy markets?
18 Q The credit charge charged by a
19 dealer in this situation would expand?
20 A Yes. It's based upon the fact
21 that -- that a history of financial markets
22 shows that credit charges tend to expand
23 during financial crises and particularly
24 ones that are motivated or that have at
25 their core credit crisis.

Page 191

1 Peter Shapiro
2 You can see it across the
3 board. In this credit crisis, we went back
4 and looked at the -- at the widening of
5 spreads for virtually every
6 credit-sensitive instrument in the market.
7 And you see credit spreads not just
8 widening, but in many cases exploding.
9 Q You did an analysis of the
10 widening of credit spreads as has happened
11 since the financial crisis?
12 A Yes.
13 Q And when did you do that
14 analysis?
15 A I can't remember, but I
16 remember at some point we did that. And I
17 can't remember if it was in conjunction
18 with this case or with another case. But
19 it's something that we looked at closely to
20 say:
21 "Let's look at any other
22 instrument we can look at and see what
23 happened to credit spreads."
24 Q And you looked at it and
25 concluded that, obviously, the credit

Page 192

1 Peter Shapiro
2 charge from your perspective would be
3 larger than the one at Lehman's inception?
4 A At the inception of this
5 agreement, yeah.
6 Q And the analysis you did of the
7 widening of credit charges in the market,
8 is that reflected in some work papers
9 somewhere?
10 A It -- when you say "is it
11 reflected in a work paper," tell me what
12 you mean by that.
13 Q Did you prepare a memo
14 summarizing the analysis you did? Are
15 there E-Mails exchanged detailing the
16 analysis?
17 A I don't believe so. I believe
18 we -- I know we -- I know at some point
19 this was written up for some purpose. It
20 may have been in another case.
21 Q But you recall that there was a
22 written analysis of the widening of
23 spreads?
24 A Yes.
25 MS. SAWYER: I would request a

Page 193

1 Peter Shapiro
2 copy of that analysis, too, Paul.
3 MR. LAWRENCE: If it's a TSA
4 thing, otherwise, we won't have access
5 to it.
6 (Analysis of widening of
7 spreads requested.)
8 Q I have a couple of questions
9 off of the privilege log, and then we will
10 be done with that.
11 A Okay.
12 Q Did you determine what Lehman's
13 inception spread was for the RFA?
14 A I have discussed this with
15 counsel.
16 Q Did you determine what the
17 Lehman inception spread was at the time of
18 the inception of the RFA?
19 A When you say, did we determine
20 it --
21 MR. LAWRENCE: I think she's
22 asking whether you personally
23 determined, not whether I interpreted
24 a document, right?
25 THE WITNESS: Oh.

Page 194

1 Peter Shapiro
2 Q Right, no.
3 Does Swap Financial have an
4 opinion as to what Lehman's spread was at
5 the inception of the RFA?
6 A Do we have an opinion about
7 what it was?
8 You know, if I -- I have a
9 general opinion about what it was; but, you
10 know, I'm not -- I don't need certainty on
11 this.
12 Q Was there any analysis done by
13 Swap Financial?
14 A We -- I don't -- I don't
15 believe so.
16 Q What's your opinion as to what
17 the spread was at inception?
18 A My spread -- my -- my opinion
19 is based upon conversations I have had that
20 it was somewhere between 50 and 100 basis
21 points.
22 Q If you could turn to page 30 of
23 the privilege log, the first entry 132357,
24 which indicates that it's from Lillian
25 Chern, and its subject is, "TSA inception

Page 195

1 Peter Shapiro
2 spread"; do you see that?
3 A Yeah.
4 Q It says, "Internal note."
5 Do you recall whether
6 Ms. Chern --
7 MR. LAWRENCE: What was the
8 number?
9 MS. SAWYER: 132357.
10 Q Do you recall whether Ms. Chern
11 determined what the inception spread was
12 for the RFA?
13 A It looks like she may have run
14 some analysis on this looking at this.
15 Q Okay.
16 A You know, it reflects this is
17 an E-Mail message. It may have been just
18 discussing general terms.
19 Q Do you recall what her
20 conclusion was?
21 A No.
22 Q If you could turn to page 35,
23 entry 132410.
24 A Yep.
25 Q This appears to be -- the

Page 196

1 Peter Shapiro
2 subject line of this 2010 E-Mail appears
3 to -- says:
4 "TSA loss memo V four."
5 Do you see that?
6 A Yes.
7 Q Do you know what the "TSA loss
8 memo" is?
9 A I believe it's the one that
10 looks -- you know, would look like one of
11 the prior exhibits that we have discussed.
12 Q So it looks like the
13 September 10, 2009, memorandum?
14 A Yes, yes.
15 Q Lehman Exhibit 19?
16 A Right.
17 Q Do you believe it to be that
18 document?
19 A I don't know about what the --
20 you know, what the suffix "V four" would
21 indicate.
22 Q Do you recall there being
23 amendments made to this memorandum after
24 September of 2009?
25 A Is September of 2009 the last

Page 197

1 Peter Shapiro
2 of the two versions?
3 Q Yes.
4 A I don't believe so. I think
5 that's the final.
6 Q Okay. Now, this message is
7 from July of 2010?
8 A Right.
9 Q Does that refresh your
10 recollection that there were amendments
11 made subsequent to September of 2009?
12 A No, my guess is it's just
13 attaching the same -- you know, the same
14 attachment. They're referring to that same
15 document.
16 Q Do you recall whether or not
17 this was version four of the memorandum?
18 A I do not. I do not.
19 Q If you could turn to page 75,
20 entry 132666, which appears to be an E-Mail
21 from April of 2012 between Lillian Chern
22 and James Vergara.
23 Do you see that?
24 A Yes.
25 Q Do you recall when James

Page 198

1 Peter Shapiro
2 Vergara left Swap Financial Group?
3 A 2010. I can't remember the
4 month, but I know it was 2010.
5 Q So this would have been after
6 he had departed?
7 A Yes.
8 Q Do you recall what was being
9 discussed with Mr. Vergara after he left
10 Swap Financial Group?
11 A I recall a set of conversations
12 with James having to do with trying to get,
13 you know, E-Mails off of his computer that
14 you were requesting.
15 Q Now, of course, this describes
16 it as being a discussion regarding loss
17 calculation?
18 A Right.
19 Q Do you recall having
20 discussions with Mr. Vergara after he left
21 Swap Financial about the calculation of
22 loss?
23 A No.
24 Q Do you know if anybody at Swap
25 Financial Group had conversations with

Page 199

1 Peter Shapiro
2 Mr. Vergara after he left about the
3 calculation of loss?
4 A I don't have personal knowledge
5 of that. No.
6 Q If you could turn to page 79,
7 the first two entries 132691 and 132692 are
8 E-Mails between you and Lillian Chern from
9 February 2013 regarding "TSA Alt loss Calc
10 memo."
11 Do you see that?
12 A The second one is on the "alt
13 loss calc memo."
14 Q The first one is on the
15 "revised RFA interest rate loss" memo?
16 A Correct.
17 Q Are those two different
18 memorandum that were being worked on in
19 February of 2013?
20 A It appears. You know, they may
21 not have been both being worked on by us.
22 Q Who could they have been being
23 worked on?
24 A As we previously discussed, you
25 know, Bob Cook had been looking at interest

Page 200

1 Peter Shapiro
2 loss.
3 Q Do you recall Mr. Cook
4 preparing a memorandum about interest loss?
5 A No. I'm -- wait, excuse me. I
6 do recall seeing a memorandum. I mean, I
7 don't know if he prepared it. But I recall
8 that he produced an analysis -- it would
9 have been in memo form -- that we
10 previously discussed.
11 Q We previously discussed a
12 spreadsheet he had kept of loss interest.
13 Do you believe that he also prepared a
14 memorandum regarding loss interest?
15 A I don't know. I'm not -- not
16 sure if what I saw was in spreadsheet form
17 or memorandum form, of which -- not
18 registering in my mind which form I looked
19 at.
20 Q So looking at the first entry,
21 the one about the RFA interest loss memo,
22 do you recall whether anyone at Swap
23 Financial Group was involved in preparing a
24 memo on that topic?
25 A To the extent we were, we would

Page 201

1 Peter Shapiro
2 have probably just been using his data.
3 Q Do you recall whether or not
4 Swap Financial Group was involved in the
5 preparation of such a memo?
6 A I can't recall, but it would
7 have -- we would have wanted to include
8 that in any calculations that we looked at
9 of loss and in preparation for mediation.
10 Q But you don't specifically
11 recall whether or not Swap Financial
12 prepared such a memorandum?
13 A Whether we ran numbers -- fresh
14 numbers on it or checked Bob's numbers, is
15 that what you are asking?
16 Q No, I am asking whether or not
17 a memorandum was prepared by Swap Financial
18 Group that discussed this.
19 A It's possible. It refers here
20 specifically to a memo.
21 Q And then the second entry about
22 the "TSA alt loss calc" memo from 2013,
23 what memorandum is that?
24 A It's -- I believe that would be
25 the memorandum discussing the matters that

Page 202

1 Peter Shapiro
2 we had the lengthy discussion back and
3 forth that you requested from -- from Paul.
4 Q You indicated that that
5 memorandum was prepared before the
6 mediation which took place in May of 2012?
7 A Correct.
8 Q And, now, this time frame is
9 February 2013. Do you believe that your --
10 it's the same memorandum or a different
11 memorandum?
12 A My belief is it would be the
13 same memorandum. Notice under the subject,
14 hence the letters, "FW colon," which means
15 it's forwarding something; so it would have
16 been, in other words, something that would
17 have been prepared prior to that time.
18 Q And you --
19 A That subject line obviously was
20 not a new subject line at the time -- on
21 the date that it states here.
22 You know how Outlook works in
23 that sense, or most E-Mail systems work?
24 Q Are you -- do you -- are you
25 aware of whether or not more than one

Page 203

1 Peter Shapiro
2 memorandum was produced by Swap Financial
3 Group regarding alternative loss
4 calculations?
5 A I can't -- I can't -- I'm
6 not -- I can't recall.
7 Q But your records at Swap
8 Financial Group would tell us whether there
9 was one memorandum or more than one
10 memorandum on that topic, correct.
11 A Yes. And we -- again, there
12 would be -- it would be reflected in the
13 privilege log.
14 Q But looking at this, you can't
15 tell if it's the same memorandum that was
16 prepared in advance of the mediation or a
17 different one?
18 A No way.
19 Q If you turn to page 81, entry
20 132721, this is dated May 2012. And it's a
21 draft memorandum regarding "alternative
22 calculation of loss for TSA's RFA with
23 Lehman Brothers."
24 Do you see that?
25 A Yes.

Page 204

1 Peter Shapiro
2 Q That appears to have a
3 different title than the -- than the E-Mail
4 we were just looking at for purposes of the
5 memorandum.
6 Do you see that?
7 A Right.
8 Q Does that refresh your
9 recollection as to whether there is more
10 than one memorandum on alternative
11 calculations of loss?
12 A It doesn't, no.
13 Q If you could turn to page 85,
14 entry 132748, which is an Excel spreadsheet
15 created by Bob Cook in May of 2012. And
16 it's described as "a spreadsheet of claim
17 variables and components for calculations
18 of a claim."
19 Do you see that?
20 A Yes.
21 Q Do you recall Mr. Cook
22 preparing a spreadsheet of claim variables
23 and components for calculation of a claim?
24 A I recall him doing something
25 similar. It may not have been exactly

Page 205

1 Peter Shapiro
2 that, but, yes, I do recall that.
3 Q What do you recall him doing?
4 A He was having -- having to
5 brief his board on the potential
6 variability of outcomes, like any, you
7 know, responsible senior executive would do
8 with his board.
9 Q So "variability of outcomes"
10 meaning:
11 "We will put in a claim for
12 \$47 million, but we might not get
13 \$47 million"?
14 A Yeah, what a judge could come
15 out with under various scenarios.
16 Q And do you recall the analysis,
17 what the variability was?
18 MR. LAWRENCE: I am going to
19 instruct you not to answer that
20 question.
21 MS. SAWYER: On the grounds of.
22 MR. LAWRENCE: On the grounds
23 of privilege, attorney/client
24 privilege.
25 (There was an instruction not

Page 206

1 Peter Shapiro
2 to answer.)
3 (Exhibit No. Shapiro 28,
4 Washington TSA privilege log from
5 10/4/13, is marked by the reporter for
6 identification.)
7 Q The court reporter has handed
8 you a document that has been marked as
9 Shapiro Exhibit 28. For the record, it's a
10 copy of the Washington TSA privilege log
11 from October 1, 2013 -- I -- October 4th --
12 thank you -- 2013.
13 I assume, based on your earlier
14 answer, that you didn't have any
15 involvement in the preparation of
16 Washington TSA's privilege log; is that
17 correct?
18 A That's correct.
19 Q If you could turn to page 40 of
20 the log -- actually, I will skip that.
21 Never mind.
22 If you could turn to page 96 of
23 the log.
24 A 96.
25 Q The entry is 14829.

Page 207

1 Peter Shapiro
2 A 14829, yep.
3 Q It appears to be a
4 Microsoft Word document dated April 22,
5 2009, so the day after the first valuation
6 memo was prepared by Swap Financial,
7 written by you and James Vergara.
8 It's described as:
9 "Alternative calculations of
10 loss for TSA's reserve fund agreement."
11 Do you see that?
12 A Yes.
13 Q Do you recall what alternative
14 valuations were done by Swap Financial
15 Group the day after it prepared its first
16 valuation memo for Washington TSA?
17 A I don't.
18 Q Do you recall doing alternative
19 valuations for the reserve fund agreement
20 at or about the time that the initial
21 valuation memos were done?
22 A I'm not recalling that. I'd
23 have to refresh my memory.
24 Q But to refresh your memory, you
25 would have to look at this document?

Page 208

1 Peter Shapiro
2 A Correct.
3 Q That's it for that one.
4 (Exhibit No. Shapiro 29,
5 Document, E-Mail chain, first E-Mail
6 in the chain from Peter Shapiro to
7 Sandy Garr and James Vergara on
8 July 14, 2010, Bates stamp TSA 042479
9 through 042481, is marked by the
10 reporter for identification.)
11 Q The court reporter has handed
12 you a document that has been marked as
13 Shapiro Exhibit 29, which, for the record,
14 is an E-Mail chain, Bates stamp TSA 042479
15 through 042481.
16 My questions are on the very
17 first E-Mail in the chain at the top from
18 you to Sandy Garr and James Vergara on
19 July 14, 2010; do you see that?
20 A Yes.
21 Q I will give you a moment to
22 read it.
23 A Yes, I read it.
24 Q Do you recall a discussion with
25 Lehman in the summer of 2010 on behalf of

Page 209

1 Peter Shapiro
2 Washington TSA?
3 A I recall at some point in
4 time -- I'm not remembering the exact
5 date -- that we had discussions with them
6 of trying to come up with a -- you know,
7 trying to come up with a settlement amount
8 so we could get a crystallized claim and
9 sell it.
10 Q And in the second sentence of
11 your E-Mail, you say:
12 "It was really very helpful."
13 And I am referring to the call
14 that you had had with them, correct?
15 A Right.
16 Q Do you recall learning anything
17 on the call that you found to be helpful?
18 A I'm not recalling the call. I
19 am looking down at the rest of the E-Mail
20 chain, Lauri, to see if something would
21 help me refresh memory or help me at least
22 make some logical conclusions as to that.
23 Q Okay. Sure.
24 MS. SAWYER: Can you read back
25 the question.

Page 210

1 Peter Shapiro
2 (Reporter read back pending
3 question.)
4 A I'm not specifically recalling
5 the call. My -- looking at the prior
6 message, which, for some reason, is dated
7 the same day at a later time -- I guess
8 there is a time zone thing going on here.
9 The -- it was -- obviously,
10 Lehman was showing an openness to
11 discussing credit charges, profit charges,
12 et cetera.
13 Q You don't have any specific
14 recollections?
15 A No.
16 Q Okay. And then in the second
17 paragraph --
18 A I just know we were trying
19 hard.
20 Q In the second paragraph, you
21 write:
22 "We have already spent some
23 time since the call pulling together our
24 analysis of the issue you raised about the
25 use of the forward curve with regard to the

Page 211

1 Peter Shapiro
2 LIBOR spread as it pertains to the delivery
3 of eligible securities."
4 Do you see that?
5 A Yes.
6 Q Do you recall doing an analysis
7 about the forward curve and the LIBOR
8 spread and the delivery of eligible
9 securities?
10 A I know that we went back and
11 looked at the -- at the hedgable spreads
12 that existed at the time. We -- I spent
13 some time discussing this in my prior
14 deposition, you know, the way in which you
15 hedge forward on non-LIBOR bases.
16 And, you know, when you look at
17 non-LIBOR bases like Treasury or CP, you
18 can look at what those spreads are.
19 And I remember we went back and
20 tried to look at them again.
21 Q And you remember doing that in
22 the summer of 2010 at or about the time you
23 talked to Lehman?
24 A The date is very fuzzy in my
25 recollection. It has been going on for so

Page 212

1 Peter Shapiro
2 long. But I know we went back and looked
3 at that several times.
4 Q And you looked, you said, back
5 at CP and Treasury as hedgable spreads?
6 A Yes, correct.
7 Q Did you conduct a valuation
8 involving Treasuries?
9 A We did not look at Treasuries
10 as a deliverable because it would have
11 produced a larger claim or a worse number
12 for Lehman and would have moved us further
13 from the settlement.
14 Q So you looked at it, but didn't
15 do the entire valuation because it would
16 have moved the opposite direction?
17 A Correct, it wouldn't have been
18 helpful in trying to come to a meeting of
19 the minds.
20 Q Okay.
21 (Exhibit No. Shapiro 30, Copy
22 of the Expert Witness Valuation Report
23 submitted on December 16, 2013, by
24 Mr. Curry and Mr. Hasterok, is marked
25 by the reporter for identification.)

Page 213

1 Peter Shapiro
2 Q I have handed you a document
3 that has been marked as Shapiro Exhibit 30,
4 which, for the record, is a copy of the
5 expert witness valuation report submitted
6 on December 16, 2013, by Mr. Curry and
7 Mr. Hasterok.
8 Have you seen this document
9 before?
10 A Yes, I have.
11 Q When did you first see this
12 document?
13 A I have to go back and look.
14 You know, it was after it was completed.
15 Q Did you see any drafts of it?
16 A No.
17 Q Did you discuss with Mr. Curry
18 or Mr. Hasterok the approach they were
19 going to take for their valuation of the
20 reserve fund agreement?
21 MR. LAWRENCE: In advance of
22 the report?
23 Q In advance of the report?
24 A I had a discussion with them
25 before they were engaged, you know, about

Page 214

1 Peter Shapiro
2 the -- in general, about the agreement, but
3 not about -- not while they were preparing
4 their report.
5 Q And what was the discussion
6 that you had with them in advance about the
7 agreement in general?
8 A About the challenges in trying
9 to value an agreement like this, that we
10 have already discussed.
11 Q Did you have a conversation
12 with both of them at the same time or did
13 you speak to them each separately?
14 A I think both. I had telephone
15 conversation, and we actually got together
16 at one point.
17 Q Was anybody else present when
18 the three of you got together to discuss
19 the agreement in advance?
20 A I don't believe so.
21 Q And where did that meeting take
22 place?
23 A At my office.
24 Q And how long did that meeting
25 last?

Page 215

1 Peter Shapiro
2 A Oh, it -- it had to have gone
3 on for about an hour, maybe a little less.
4 Q Did you show them a copy of the
5 reserve fund agreement?
6 A I can't recall.
7 Q Did you show them that copy of
8 your valuation memo?
9 A Again, I can't recall.
10 Q Do you recall whether or not
11 you discussed the valuation approach you
12 had taken?
13 A Yes.
14 Q Okay. And did they give you
15 any feedback on your valuation methodology?
16 A I can't recall if they gave --
17 when you say, "feedback," you know, again,
18 yes, I was candid about what I saw as the
19 challenges in this, you know, in valuing a
20 complex contract in a -- in a market that
21 was not functioning.
22 Q Did they identify any concerns
23 about the valuation that you had done as
24 reflected in your September 10, 2009, memo?
25 A It was a pretty general

Page 216

1 Peter Shapiro
2 conversation.
3 Q They didn't look at any of the
4 specific spreads that you had assumed?
5 A No. Mostly just, you know,
6 discussing what an intellectual challenge
7 is in doing something like this.
8 Q And did they identify any
9 challenges with the valuation?
10 A We -- everyone who looks at
11 this honestly, I think, identifies the
12 challenge of:
13 "How do you value something
14 when you can't get it? You know, how do
15 you put a price on something that is
16 impossible to buy," if you think of it that
17 way?
18 That was the biggest thing that
19 we spent time talking about.
20 Q And they identified that issue?
21 A Yes.
22 Q Did they identify any other
23 concerns or issues they saw?
24 A Not that I can recall.
25 Q And this was before they were

Page 217

1 Peter Shapiro
2 engaged as experts by Washington?
3 A That's correct.
4 Q And why did you meet with them
5 in advance?
6 A Both of them were looking for
7 what they were going -- their next step was
8 going to be in their careers. You know, I
9 wanted -- you know, as I say, I knew both
10 of them. They had worked together at
11 Morgan Stanley. You know, I thought there
12 might be some opportunities.
13 Q And you had known both of them
14 for some time?
15 A Yes.
16 Q And then based on the initial
17 meeting then, did you decide to introduce
18 them to Washington TSA?
19 A Yes.
20 Q And what fostered that decision
21 to introduce them to Washington TSA?
22 A Their expertise, you know, the
23 fact that Morgan Stanley was one of the
24 largest and most active providers of
25 forward purchase agreements.

<p style="text-align: right;">Page 218</p> <p>1 Peter Shapiro</p> <p>2 Q And their particular expertise</p> <p>3 in providing those agreements?</p> <p>4 A Right.</p> <p>5 Q After that initial meeting that</p> <p>6 you had with Mr. Curry and Mr. Hasterok,</p> <p>7 did you have subsequent discussions about</p> <p>8 the valuation approach they were going to</p> <p>9 take?</p> <p>10 A No.</p> <p>11 Q Did you have subsequent</p> <p>12 discussions with them about the matter?</p> <p>13 A About the "matter"?</p> <p>14 Q About the dispute with</p> <p>15 Washington -- with Lehman and Washington?</p> <p>16 A No.</p> <p>17 Q So you had no further</p> <p>18 conversations with them?</p> <p>19 A Not -- no, not in -- for</p> <p>20 preparing for this report, no.</p> <p>21 Q But did you -- between your</p> <p>22 initial meeting and the submission of their</p> <p>23 report in December of 2013, did you have</p> <p>24 discussions with them?</p> <p>25 A I am trying to think if we</p>	<p style="text-align: right;">Page 220</p> <p>1 Peter Shapiro</p> <p>2 (Reporter read back pending</p> <p>3 question.)</p> <p>4 A No.</p> <p>5 Q You did not have any discussion</p> <p>6 with Mr. Curry or Hasterok about their</p> <p>7 report after December of 2013?</p> <p>8 A No.</p> <p>9 Q Have you had any discussions</p> <p>10 with -- at any time with Mr. Curry and</p> <p>11 Hasterok about their report?</p> <p>12 A No.</p> <p>13 Q If you turn to page 20 of their</p> <p>14 report --</p> <p>15 A Yes.</p> <p>16 Q -- their conclusion, which is</p> <p>17 bolded and underlined, is that the</p> <p>18 termination amount due from LBSF and LBHI</p> <p>19 should be approximately 37.5 million.</p> <p>20 Do you see that?</p> <p>21 A Where, on which page is that?</p> <p>22 Q Page 20. And its bolded.</p> <p>23 A Yes, I do see it bolded, yes.</p> <p>24 Q Do you have an understanding of</p> <p>25 how they reached that termination amount</p>
<p style="text-align: right;">Page 219</p> <p>1 Peter Shapiro</p> <p>2 talked at all, about, you know, unrelated</p> <p>3 business matters. That is the only thing I</p> <p>4 could think about. I may have had another</p> <p>5 call on something unrelated with Mr. Curry,</p> <p>6 but not with Mr. Hasterok.</p> <p>7 Q So you don't recall having any</p> <p>8 further discussions about Washington TSA?</p> <p>9 A No, you know, I felt this --</p> <p>10 the concept was they're supposed to look at</p> <p>11 this themselves. I didn't want to feel</p> <p>12 like we were in anywhere -- in any way</p> <p>13 trying to point them in one direction or</p> <p>14 the other.</p> <p>15 Q And after this report was</p> <p>16 submitted in December of 2013, did you have</p> <p>17 discussions with them about their report?</p> <p>18 A Can I talk to counsel on this?</p> <p>19 Q Sure.</p> <p>20 MR. LAWRENCE: Sure.</p> <p>21 (There was a discussion off the</p> <p>22 record in which the witness conferred</p> <p>23 with counsel.)</p> <p>24 MR. LAWRENCE: Can you read</p> <p>25 back the last question?</p>	<p style="text-align: right;">Page 221</p> <p>1 Peter Shapiro</p> <p>2 valuation?</p> <p>3 A Yes, I do.</p> <p>4 Q And what is your understanding?</p> <p>5 A They looked at that last</p> <p>6 scenario I described to you, which is</p> <p>7 trying to look at what the total</p> <p>8 accumulated loss would be in the absence of</p> <p>9 a replacement vehicle.</p> <p>10 Q And they looked at what</p> <p>11 Washington TSA could invest in?</p> <p>12 A Yes.</p> <p>13 Q And what their anticipated</p> <p>14 earnings could be from those potential</p> <p>15 investments?</p> <p>16 A Correct.</p> <p>17 Q And they assumed that, for</p> <p>18 purposes of this calculation, that the</p> <p>19 expected return that Washington TSA would</p> <p>20 earn would be 65 basis points?</p> <p>21 A Right.</p> <p>22 Q And that was from investing in</p> <p>23 a money market fund?</p> <p>24 A I believe so.</p> <p>25 Q And do you agree with their</p>

Page 222

1 Peter Shapiro
2 methodology of assuming that Washington TSA
3 will earn 65 basis points from here until
4 2032?
5 A It's a -- as I explained
6 earlier, there is this -- there is this
7 difficult intellectual problem of trying to
8 project future interest rates beyond the
9 next two or three years.
10 And you have to make certain
11 reasonable assumptions. This is one set of
12 defensible assumptions.
13 Q It's not the set of assumptions
14 you made when you did that analysis?
15 A No.
16 Q And do you believe your
17 assumption was more accurate than theirs?
18 A "Accurate," there is no
19 accurate forecast of the future until you
20 get to that future date. And because we
21 are talking about dates that we haven't
22 gotten to yet, you know, it's impossible to
23 use the word "accurate."
24 Q For purposes of the court,
25 which assumption do you think the court

Page 223

1 Peter Shapiro
2 should employ?
3 MR. LAWRENCE: Objection to the
4 form.
5 Q You can answer.
6 A If I were the judge and I was
7 trying to say what's reasonable, I would
8 look at -- at something that would take a
9 look at what they have lost already, what
10 they reasonably could be projected to lose
11 over the next couple of years, and then
12 make some supposition about future interest
13 rates based upon a common sense standard,
14 knowing that out forecasting tools are very
15 imperfect.
16 Q And based upon the common sense
17 standard that you employed, you increased
18 that interest rate going forward?
19 A Right. I pray and hope we are
20 not in dire financial and economic
21 circumstances forever.
22 Q Now, the approach taken by
23 Mr. Curry and Mr. Mr. Hasterok is different
24 than the approach as outlined in your
25 September 10, 2009, memo to valuing the

Page 224

1 Peter Shapiro
2 reserve fund agreement?
3 A Correct.
4 Q If the court were to try to
5 determine which approach it should use,
6 whether it should be your September 10,
7 2009 methodology or Mr. Curry and
8 Hasterok's methodology, which approach
9 should the court adopt?
10 MR. LAWRENCE: Objection to the
11 form.
12 A You know, I think you are
13 getting above my expertise in terms of what
14 a court should do, you know, in terms of a
15 judge. A judge is going to weigh facts and
16 circumstances and the law and lots of
17 arguments like that.
18 The hypothetical replication
19 methodology that we used in our memo from
20 2009 that you referenced, you know, is a --
21 is a reasonable approach; but it includes
22 those important, you know, unknowns,
23 those -- those admitted areas where you
24 have to make estimates that you focused on
25 very well, which are the credit spread, the

Page 225

1 Peter Shapiro
2 profit spread, and the deliverable spread.
3 And on each of those, you have
4 to make some kinds of -- some kinds of
5 estimates. And, you know, all of these
6 reasonable people could have some
7 disagreement about.
8 Q So are you saying that the --
9 that in your expert opinion, the Curry and
10 Hasterok approach is the preferred
11 approach?
12 A No, I am saying it's a
13 reasonable approach. And any one of these
14 are reasonable approaches in a very
15 difficult valuation question.
16 Q In your expert opinion, which
17 approach is the market-accepted approach?
18 MR. LAWRENCE: Objection to the
19 form.
20 A In my -- in my expert opinion,
21 the most common approach used in the market
22 is hypothetical replication.
23 Q Have you ever seen a valuation
24 done like Mr. Curry and Hasterok's in the
25 market?

Page 226

1 Peter Shapiro
2 A Yes.
3 Q And when have you seen that?
4 A The one that we prepared as an
5 alternative loss calculation.
6 Q And other than that
7 circumstance, in the market, in the event
8 of a termination of a forward purchase
9 agreement, have you seen this valuation
10 approach as outlined in the Curry and
11 Hasterok report?
12 A Not that I can think of.
13 Q Now, Mr. --
14 A Let me -- I'm sorry. Let me
15 correct that.
16 There are other Lehman disputes
17 where, again, we have looked at it, at this
18 as an alternative way to do it. So I would
19 say, you know, with regard to those other
20 Lehman disputes, we have looked at it this
21 way as well.
22 And it's, again:
23 In the absence of a functioning
24 market, what do you do?
25 Q Now, Curry and Hasterok, in

Page 227

1 Peter Shapiro
2 their expert report, they suggest that the
3 hypothetical swap approach should be
4 rejected because Washington TSA could not
5 transact at that level?
6 A Exactly.
7 Q And you are familiar with that,
8 that assertion they make; do you agree with
9 it?
10 A It's a -- it is a reasonable
11 contention.
12 Q It's a reasonable criticism of
13 your approach?
14 A Yes.
15 Q And, yet, even in the face of
16 that criticism, you still believe that your
17 approach is the market approach to valuing
18 these contracts?
19 A What I'd say is not the market
20 approach because there is not a market. I
21 am saying, historically, this has been the
22 way in which you value these agreements.
23 The problem with doing it post 2009 is the
24 market shut down.
25 Q When you say this has been the

Page 228

1 Peter Shapiro
2 approach to valuing these, you are
3 referring to your approach?
4 A Yes, the hypothetical
5 replication.
6 Q Yes.
7 In Mr. Curry's and Hasterok's
8 report, they assume that TSA will continue
9 to invest in money market funds for the
10 life of the RFA, correct?
11 A I believe so.
12 Q Do you believe that to be a
13 proper assumption?
14 A In the absence of any
15 alternative, you know, that would allow
16 them to get a longer term rate, they are
17 stuck with short-term securities.
18 Q But there are other short term
19 securities besides money market accounts;
20 you would agree?
21 A Yes, there are ones that
22 would -- that yield significantly less.
23 Q And there are some that yield
24 significantly more?
25 A Perhaps.

Page 229

1 Peter Shapiro
2 Q And do you believe it's a
3 proper assumption to use a money market
4 account or money market fund even though
5 that's not an eligible security under the
6 RFA?
7 A Is -- is -- money market --
8 money market fund allowed under the RFA if
9 it's high enough rated? I'd have to go
10 back and look at the list of eligible
11 securities.
12 Q If it were not an eligible
13 security?
14 A If it -- if it -- are you
15 saying you believe it not to be an eligible
16 investment?
17 Q I'm asking -- I can actually
18 ask you a hypothetical question.
19 A Yes.
20 Q If money market accounts were
21 not an eligible security under the RFA,
22 would you believe it's appropriate to base
23 a valuation of the RFA upon an investment
24 in them?
25 MR. LAWRENCE: Object to the

Page 230

1 Peter Shapiro
2 form.
3 A Again, if they were not
4 allowed, they shouldn't be -- you wouldn't
5 use them. It's not appropriate to use
6 them.
7 Q At your last deposition, you
8 testified that, in valuing the RFA, you
9 should use the cheapest to deliver of the
10 eligible securities.
11 Do you recall that?
12 A Correct.
13 Q Which means the highest
14 yielding of the eligible securities, fair
15 enough?
16 A Correct.
17 Q And you have testified today
18 and last time that you have done analyses
19 for Washington TSA about investments they
20 could make that would be higher yielding
21 than a money market account?
22 A I don't think I ever said in
23 comparison to a money market account.
24 Q You did an analysis in November
25 of 2011 that recommended investments that

Page 231

1 Peter Shapiro
2 would yield significantly more than
3 65 basis points.
4 Do you recall that?
5 A Yes, but I was never comparing
6 specifically to a money market account.
7 You know, whether or not it was more
8 than -- more or less than 65 basis points
9 is a different question.
10 But we didn't look at, I don't
11 think, a comparison with the money market
12 account.
13 Q But you recall making
14 recommendations of investments that
15 Washington TSA could make that would yield
16 more than 65 basis points?
17 A Correct.
18 Q And are you aware that
19 Washington TSA was presented with other
20 alternatives from Barclay's or Grant Street
21 that would yield significantly more than 65
22 basis points?
23 MR. LAWRENCE: Objection to the
24 form.
25 A Yes, yes.

Page 232

1 Peter Shapiro
2 Q Did you discuss those alternate
3 reinvestment options, either yours or
4 others, with Washington TSA?
5 A Yes.
6 Q And do you know why Washington
7 TSA has not invested in any of those higher
8 yielding options?
9 A They felt in most cases like
10 they represented too much risk.
11 Q And who did you have that
12 discussion with?
13 A My recollection is we had -- I
14 had discussions with the senior staff, and
15 they may have involved at least one board
16 member, maybe a couple of board members.
17 Q Do you recall having more than
18 one discussion about this?
19 A Yes.
20 Q How many discussions do you
21 recall?
22 A I would say it would be
23 somewhere between three and five.
24 Q When was the last time you
25 discussed the possibility of investing in

Page 233

1 Peter Shapiro
2 something that would yield more than 65
3 basis points with Washington TSA?
4 A I believe it was more than two
5 years ago. It could have extended into
6 2012. I don't think there were any
7 discussions in 2013.
8 Q You are not aware of them
9 recently considering reinvestment options?
10 A The only thing I am aware of is
11 that there -- when they did a refinancing,
12 there may have been some discussion about
13 that. But we weren't involved in that
14 discussion.
15 Q Other than Mr. Curry and
16 Mr. Hasterok, do you know if Washington TSA
17 considered hiring anyone else to serve as
18 an expert in this case?
19 A I can't recall.
20 Q Did you recommend anyone else
21 to be considered as potential experts in
22 this case?
23 A I know he had a conversation
24 about various places to go for experts on
25 this.

Page 234

1 Peter Shapiro
2 Q And did you recommend any other
3 individuals?
4 A I may have discussed them.
5 Q Who do you recall?
6 A I'm not recalling.
7 Q Okay. Do you recall where else
8 you suggested they might look for experts?
9 A You know, I recall generally
10 saying that I thought the best thing would
11 be to have somebody who would provide a
12 good balance to my expertise by having
13 somebody who had recent dealer experience.
14 Q Because that was something you
15 were lacking?
16 A Yes, because I haven't been on
17 the dealer side, you know, as you have gone
18 over, since 1993, which is a little while
19 ago.
20 Q And the market was relatively
21 young at that point?
22 A Correct.
23 Q In your last deposition, Jay
24 asked a couple of questions about the
25 market quotation process that you did in

Page 235

1 Peter Shapiro
2 March of 2009 relating to the Washington
3 RFA.
4 Do you recall that?
5 A Yes.
6 Q And you had indicated that you
7 weren't able to obtain anything either
8 actionable or indicative in terms of quotes
9 at that time?
10 A Right.
11 Q And you said you also didn't
12 retain any records relating to that
13 process?
14 A Right.
15 Q You also ran a market quotation
16 process for Tobacco New York; is that
17 correct?
18 A Yes, for New York State Tobacco
19 Securitization Financing Corporation.
20 Q And do you recall the results
21 of that market quotation process?
22 A No -- no bid, you know, no
23 quotes.
24 Q Do you recall whether you kept
25 records of that process?

Page 236

1 Peter Shapiro
2 A I believe we kept a list of who
3 we contacted. We put it in a memo form for
4 them.
5 MS. SAWYER: Mark this one.
6 A I think -- do you have that?
7 Yes.
8 Q 31.
9 (Exhibit No. Shapiro 31, Swap
10 Financial Group memorandum,
11 October 19, 2009, relating to
12 calculation of loss for TSFC's two
13 reserve fund agreements with Lehman
14 Brothers Special Financing, Inc., is
15 marked by the reporter for
16 identification.)
17 Q I am handing you a document
18 that has been marked as Shapiro Exhibit 31,
19 which is a Swap Financial Group memorandum,
20 October 19, 2009, relating to calculation
21 of loss for TSFC's two reserve fund
22 agreements with Lehman Brothers Special
23 Financing, Inc.
24 And is this a memorandum that
25 you prepared?

Page 237

1 Peter Shapiro
2 A I prepared with James Vergara.
3 My guess is James did the first cut.
4 Q And this was prepared on
5 October 19, 2009, so after the loss
6 valuation memo for Washington, correct?
7 A Correct.
8 Q And it indicates in the -- in
9 the paragraph above the chart, it says:
10 "On September 11, 2009, SFG on
11 behalf of TSFC distributed a term sheet,
12 execution copies of RFAs, and credit and
13 financial information on TSFC to 14
14 dealers."
15 A Correct.
16 Q Do you recall doing that
17 process for TSFC New York?
18 A I'm not recalling specifically
19 doing them. My guess is James did.
20 Q Okay. And did you distribute
21 similar information to the dealers for
22 Washington TSA?
23 A I don't believe we did. I
24 believe we made -- we reached out to them
25 all by telephone and got turned down right

Page 238

1 Peter Shapiro
2 away.
3 Q Why the difference between
4 Washington and New York?
5 A New York had -- New York made
6 different requests of us.
7 Q Who made different requests of
8 you?
9 A The New York agency.
10 Q So the New York agency insisted
11 upon a market quotation process?
12 MR. LAWRENCE: Objection to the
13 form.
14 A No. Both required a market
15 quotation process. This one, New York
16 asked for us to take specific steps in a
17 specific manner.
18 Q So someone from the New York
19 Tobacco Settlement Agency asked for you to
20 run the process in this way?
21 A Correct.
22 Q And a similar request wasn't
23 made by Washington?
24 A Right.
25 Q Did you discuss with Washington

Page 239

1 Peter Shapiro
2 whether or not a formal process where
3 information was distributed should be run?
4 A No.
5 Q That discussion never occurred?
6 A Not that I can recall.
7 Q And did -- and did New York
8 raise the issue with you to run a formal
9 process?
10 A I'm not remembering the
11 details. I just know New York had more of
12 a desire to paper things.
13 Q Than Washington did?
14 A Yes.
15 Q What do you mean by "a desire
16 to paper things"?
17 A To create a specific paper
18 record.
19 Q And is that why then you
20 recorded the results of your contacts?
21 A Correct.
22 Q But you didn't feel it
23 necessary to keep any sort of records like
24 this for Washington TSA?
25 A No. And when -- you know, if

Page 240

1 Peter Shapiro
2 you read the ISDA agreement, it
3 specifically allows you -- you know, it
4 says, "Your records will be" -- you know,
5 will -- it doesn't use the word
6 "dispositive."
7 But it says the record of the
8 party taking them is all that's required.
9 You don't have to have records coming back
10 from the dealers and all of those kinds of
11 things. New York wanted it to go a little
12 further.
13 Q You referred to the "ISDA
14 agreement"?
15 A The ISDA agreement, yeah.
16 Q We are dealing with the reserve
17 fund agreement here.
18 A Yes, exactly, but it's the --
19 because the reserve fund agreement is based
20 upon ISDA, we kind of look at that as a
21 standard reference.
22 Q But there is no such language
23 in the reserve fund agreement like there is
24 in the ISDA?
25 A I'll accept your -- your

Page 241

1 Peter Shapiro
2 statement there.
3 Q So you never discussed with
4 Washington TSA potentially that they might
5 want to paper their records a little bit?
6 A We didn't, no.
7 Q Okay.
8 A And as you know, there is no
9 contention that anyone is making that there
10 was -- there was a live market.
11 Q But you are aware that Lehman
12 obtained an indicative quote in March of
13 2009?
14 A We have seen that indicative
15 quote; and if you read it closely, you
16 would agree with me that it's as far from
17 actionable as you can get.
18 Q But they did obtain an
19 indicative quote, correct?
20 A Yeah, I would call it a "junk
21 quote."
22 Q Did you contact Wachovia?
23 A Yes.
24 Q And they said:
25 "We are going to give one to

Page 242

1 Peter Shapiro
2 Lehman, but not to you"?
3 A No. Wachovia said they
4 couldn't quote on it.
5 Q And why do you think Lehman was
6 able to get an indicative quote then?
7 A My guess is Lehman coaxed a
8 quote out of them with all the caveats that
9 they put in it, which we think make it
10 useless.
11 Q Now, of course, when you
12 solicited quotes for Tobacco New York, the
13 solicitation packet contained all of those
14 caveats as well, correct?
15 A Caveats such as?
16 Q That they didn't need to
17 provide indicative quotes, correct?
18 A They didn't need to provide
19 indicative quotes?
20 Q Or they were -- or they were
21 seeking -- I'm sorry -- they didn't need to
22 provide actionable quotes.
23 A Correct.
24 Q All that was being sought was
25 an indicative quote?

Page 243

1 Peter Shapiro
2 A That is correct. That is
3 correct. That is correct. It doesn't --
4 that we weren't seeking to transact.
5 Q And when you contacted the
6 dealer --
7 A But we did say these entity,
8 you know, quotes, which would be real -- we
9 tried to characterize it in as much
10 language as we -- as we could that this --
11 that these have to be real.
12 You know, these can't be, you
13 know, "Do us a favor and give us a quote."
14 Q So in New York, you solicited
15 indicative quotes for New York, correct?
16 A "Indicative" I don't think is
17 the word we -- that I would really use. I
18 would say that these are not live quotes
19 that the agency would take action on.
20 Q Did you communicate that to
21 Washington -- to the dealers you solicited
22 in Washington as well?
23 A Yes, they knew full well the
24 process.
25 Q And even though you indicated

Page 244

1 Peter Shapiro
2 you were not seeking an actionable quote,
3 they still refused to provide even
4 indicative levels?
5 A Absolutely.
6 Q And which dealers did you
7 contact for Washington?
8 A We went exhaustively, just like
9 we did here.
10 Q You contacted these exact same
11 dealers?
12 A You know, it would have been
13 everybody on the system. I am trying to
14 think if it would be anybody else we would
15 have extended out to beyond this. I'm not
16 sure. I'd have to go back and look at who
17 was in the -- potentially in the market at
18 that time.
19 You know, remember, there are
20 mergers going on at this time; so you
21 notice on this one, Wachovia and Wells are
22 both listed separately because they had
23 separate desks still at that time, and even
24 though they were in the midst of a merger.
25 You know, so there are -- there

Page 245

1 Peter Shapiro
2 are situations like that where you have to
3 look -- at different dates, you may have
4 multiple counterparties.
5 Q Have you reviewed both of the
6 expert reports submitted by Lehman in this
7 matter?
8 A Yes.
9 Q And do you know David Babble?
10 A No, I don't.
11 Q And what's your opinion of
12 Mr. Babble expert report?
13 A You know, I didn't come here
14 today to discuss that in detail. So I'd
15 need to spend more time formulating it. My
16 first impression of it was it wasn't very
17 useful.
18 Q Why didn't you find it useful?
19 A It has an illogical, slavish
20 adherence to the forward yield curve being
21 a good predictor of where markets will go,
22 despite evidence -- despite the majority of
23 the evidence to the contrary.
24 Q Do you know Mr. Greuer?
25 A Yes.

Page 246	Page 248
<p>1 Peter Shapiro</p> <p>2 Q And how do you know Mr. Greuer?</p> <p>3 A He's been an active participant</p> <p>4 in this market for many years.</p> <p>5 Q And what is your opinion of</p> <p>6 Mr. Greuer?</p> <p>7 A I like him.</p> <p>8 Q And do you have any comments on</p> <p>9 his report?</p> <p>10 A Yeah, I -- you know, I think he</p> <p>11 was presenting an inaccurate portrait of</p> <p>12 what a hypothetical replacement would be.</p> <p>13 Q In terms of his comments on</p> <p>14 your hypothetical replacement transaction</p> <p>15 analysis?</p> <p>16 A Yeah, he's -- I think he's very</p> <p>17 wrong.</p> <p>18 Q Anything else?</p> <p>19 A There are a lot of reasons he's</p> <p>20 wrong, but he's very wrong, yeah.</p> <p>21 Q What are the reasons he's</p> <p>22 wrong?</p> <p>23 A Well, you know, he is looking</p> <p>24 at -- his biggest single reasons he's wrong</p> <p>25 are on the spread calculation. You know,</p>	<p>1 Peter Shapiro</p> <p>2 THE WITNESS: Sure.</p> <p>3 MS. SAWYER: I don't have</p> <p>4 anything further.</p> <p>5 MR. LAWRENCE: Thanks.</p> <p>6 (Deposition adjourned, 3:05 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 247	Page 249
<p>1 Peter Shapiro</p> <p>2 he's way off on the spread.</p> <p>3 If his spread calculations are</p> <p>4 correct, banks would have been tripping</p> <p>5 over each other to do this business and</p> <p>6 making a bundle doing it because they could</p> <p>7 have written these agreements at rates</p> <p>8 which were far above what he was proposing,</p> <p>9 and expanded their profit margins</p> <p>10 drastically.</p> <p>11 But nobody was wanting to do</p> <p>12 it. That tells you his numbers are no</p> <p>13 good.</p> <p>14 Q And when you refer to the</p> <p>15 spread, he adopted your profit spread of 25</p> <p>16 basis points, correct?</p> <p>17 A Right.</p> <p>18 Q So you are referring to his</p> <p>19 credit spread?</p> <p>20 A I am referring to his credit</p> <p>21 spread principally.</p> <p>22 MS. SAWYER: If you just want</p> <p>23 to give me a second, I'm going to look</p> <p>24 over my notes and we might be</p> <p>25 finished.</p>	<p>1</p> <p>2 J U R A T</p> <p>3</p> <p>4 I DO HEREBY CERTIFY that I have</p> <p>5 read the foregoing transcript of my</p> <p>6 deposition testimony.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 SWORN TO AND SUBSCRIBED</p> <p>12 BEFORE ME THIS</p> <p>13 DAY OF 2014</p> <p>14 -----</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

	Page 250
1	
2	I N D E X
3	WITNESS DIRECT CROSS
4	
5	
6	
7	PETER SHAPIRO
8	
9	
10	
11	BY MS. SAWYER 3
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

	Page 252
1	
2	
3	Exhibit No. Shapiro 18, Invoice 28
4	from Mr. Shapiro to Washington
5	TSA for services performed
6	Exhibit No. Shapiro 19, Invoice 28
7	from Mr. Shapiro to Washington
8	TSA for services performed
9	Exhibit No. Shapiro 20, Invoice 29
10	from Mr. Shapiro to Washington
11	TSA for services performed
12	Exhibit No. Shapiro 21, 7/8/13 29
13	Invoice from Mr. Shapiro to
14	Washington TSA for services
15	performed
16	Exhibit No. Shapiro 22, 7/12/13 29
17	Invoice from Mr. Shapiro to
18	Washington TSA for services
19	performed
20	Exhibit No. Shapiro 23, Invoice 29
21	from Mr. Shapiro to Washington
22	TSA for services performed
23	Exhibit No. Shapiro 24, 9/28/13 29
24	invoice from Mr. Shapiro to
25	Washington TSA for services
	performed
	Exhibit No. Lehman 15, April 25, 81
	2009 memorandum from Swap
	Financial Group, previously
	marked Document
	Exhibit No. Lehman 19, September 81
	10, 2009 Memorandum from Swap
	Financial Group, previously
	marked Document

	Page 251
1	
2	EXHIBITS
3	
4	NUMBER DESCRIPTION PAGE
5	
6	Exhibit No. Shapiro 10, Document 16
7	Exhibit No. Shapiro 11, Agreement 19
8	between Peter Shapiro and
9	Washington TSA for consulting and
10	expert services
11	Exhibit No. Shapiro 12, Agreement 19
12	between Peter Shapiro and
13	Washington TSA for consulting and
14	expert services
15	Exhibit No. Shapiro 13, Agreement 19
16	between Peter Shapiro and
17	Washington TSA for consulting and
18	expert services
19	Exhibit No. Shapiro 14, Agreement 19
20	between Peter Shapiro and
21	Washington TSA for consulting and
22	expert services
23	Exhibit No. Shapiro 15, Agreement 20
24	between Peter Shapiro and
25	Washington TSA for consulting and
	expert services
	Exhibit No. Shapiro 16, Agreement 20
	between Peter Shapiro and
	Washington TSA for consulting and
	expert services
	Exhibit No. Shapiro 17, Exhibit B 21
	to Agreement between Peter
	Shapiro and Washington TSA for
	consulting and expert services

	Page 253
1	
2	
3	Exhibit No. Shapiro 25, Copy of 96
4	the expert information provided
5	to Jones Day on December 16,
6	2013, a copy of Mr. Shapiro's
7	September 10, 2009, memorandum
8	with an additional cover sheet
9	Exhibit No. Shapiro 26, Excel 103
10	spreadsheet Bates stamped
11	SFG 2009
12	Exhibit No. Shapiro 27, Copy of 120
13	the Swap Financial privilege log
14	There was an instruction not to 130
15	answer.
16	There was an instruction not to 131
17	answer.
18	There was an instruction not to 135
19	answer.
20	Memorandum prepared for mediation 170
21	requested
22	Memorandum containing valuations 188
23	requested
24	Analysis of widening of spreads 193
25	requested
	There was an instruction not to 205
	answer.
	Exhibit No. Shapiro 28, 206
	Washington TSA privilege log from
	10/4/13
	Exhibit No. Shapiro 29, Document, 208
	E-Mail chain, first E-Mail in the
	chain from Peter Shapiro to Sandy
	Garr and James Vergara on
	July 14, 2010, Bates stamp TSA
	042479 through 042481

Page 254

1
2
3 Exhibit No. Shapiro 30, Copy of 212
4 the Expert Witness Valuation
5 Report submitted on December 16,
6 2013, by Mr. Curry and
7 Mr. Hasterok
8 Exhibit No. Shapiro 31, Swap 236
9 Financial Group memorandum,
10 October 19, 2009, relating to
11 calculation of loss for TSFC's
12 two reserve fund agreements with
13 Lehman Brothers Special
14 Financing, Inc.
15
16
17
18
19
20
21
22
23
24
25

Page 255

1
2 CERTIFICATE
3
4 I, TAB PREWETT, A Registered
5 Professional Reporter, Notary Public,
6 Certified LiveNote Reporter, and Certified
7 Shorthand Reporter, do hereby certify that
8 prior to the commencement of the
9 examination PETER SHAPIRO was sworn by the
10 notary public to testify the truth, the
11 whole truth and nothing but the truth.
12
13 I DO FURTHER CERTIFY that the
14 foregoing is a true and accurate transcript
15 of the testimony as taken stenographically
16 by and before me at the time, place and on
17 the date hereinbefore set forth.
18
19 I DO FURTHER CERTIFY that I am
20 neither a relative nor employee nor
21 attorney nor counsel of any of the parties
22 to this action, and that I am neither a
23 relative nor employee of such attorney or
24 counsel, and that I am not financially
25 interested in the action.

Notary Public

My Commission expires February 9, 2019
Dated: March 16, 2014